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WORLD MARITIME UNIVERSITY

MALMO, SWEDEN

LEGAL MECHANICS OF MARINE CARGO INSURANCE
AND THE FUTURE DEVELOPMENTS IN THAILAND

by

AREE PICHITGLAR-IAM

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THAILAND

This paper submitted to the Faculty of the World
Maritime University in partial satisfaction of the
requirements for the award of a

MASTER OF SCIENCE DEGREE
in
GENERAL MARITIME ADMINISTRATION

The contents of this paper reflect my personal views and
are not necessarily endorsed by the UNIVERSITY.

SIGNATURE:



DATE: 04 November 1986

Supervised and assessed by: Professor Aage Os
The World Maritime University.

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Assuranceforeningen Gard, Arendal, Norway.

IN THE NAME OF ALLAH

THE COMPASSIONATE

THE MERCIFUL

" ALLAH it is who has subjected the sea to
you that ships may sail thereon by His
command and that you may seek His Bounty
and that you may be grateful."

Al-Qur'an.

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- Malmo, Sweden.

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INTRODUCTION

The insurance business in Thailand is catergorised into two main sectors, i.e.the Life-insurance and NonLife insurance business . At the end of 1982, the number of companies involved directly in Non - life insurance business in Thailand was 67 which was made up as follows ; 6 Health insurance companies , 6 Composite companies and 55 Non-life insurance companies. Of all the 67 companies, 62 were registered in Thailand and 5 were branches of foreign companies. A total of 1,013,677 policies were sold by Non-life insurance companies of which 120,483 policies were Marine and Transportation policies. The total direct premium amounted to 4,159 million baht (i.e. circa USD 162.46 million at the exchange rate of 25.600 baht to the dollar as on August,1986) received from several types of insurance,i.e. Fire insurance 1,914 million baht (circa USD 74.77 million),Marine and Transportation insurance 479 million baht (circa USD 18.71 million), Automobile insurance 1,171 million baht (circa USD 45.74 million dollars),Miscellaneous insurance 569 million baht (courca USD 22.23 million) and Health insurance 26 million baht (circa USD 1.02 million).

The operating of the insurance business ,which is a part of commerce,is governed by the Civil and Commercial Code. The performing insurance company must be a limited company established under the provisions of the Civil and Commercial Code . In order to perform an insurance businesss, a company must be licensed as an Insurance Company according to the specific laws, that is ,the Insurance Against Loss Act, B.E. 2510 (1967) and/or the Insurance

on Life Act, B.E.2510 (1967). This business is under the supervision of the Insurance Department, Ministry of Commerce, the main functions of which are, for instance, to maintain the financial position of insurance companies, to supervise the making of contracts of insurance and the rates of premium so that they are fair to all relevant parties and to develop the insurance business in accordance with the National Economic and Social Development Plan.

The purposes of the two Acts, the Insurance Against Loss Act, B.E.2510 (1967) and the Insurance on Life Act, B.E. 2510 (1967), are to control the performance of an insurance company and protect the assured's interest. The provisions of these two Acts do not repeal the provisions of insurance regulated in the Civil and Commercial Code. Therefore, the Civil and Commercial Code is applicable to the operating insurance business as far as it is concerned.

The provisions of the Civil and Commercial Code dealing with insurance matters are regulated in Title XX, sections 861 - 897, which cover all types of insurance. For marine insurance matters, these are regulated in section 868 :

" Contracts Maritime insurance shall be governed by the provisions of the Maritime Law.". By this section, it can be seen that marine insurance matters shall be governed by the specific law and, the Maritime law, with the exceptions of the Civil and Commercial Code. Because of the different characteristics differ from the non-marine insurance. However, since the Civil and Commercial Code

has been promulgated from B.E.2468 (1925), the provisions of Maritime law, particularly related to marine insurance matters, have not as yet been promulgated. As is well known, marine insurance plays a very important role in the shipping business today, not only locally but also internationally. But, in Thailand, marine insurance has been carried out in the country without any specific codifications which are the fundamental elements of the business. Where the specific law is absent, how do the disputes arising overcome? The solution is laid down in section 4 of the Civil and Commercial Code:

" The law must be applied in all cases which come within the letter or the spirit of any of its provisions.

Where no provision is applicable, the case shall be decided according to the local custom.

If there is no such custom, the case shall be decided by analogy to the provision most nearly applicable, and, in default of such provision, by the general principles of law."

Accordingly, where no provisions of specific law is applicable, the dispute arising shall be decided by the local custom, or by analogy to the provisions most nearly applicable, or the general principles of law respectively. The questions then arising are how does the Court consider what the local custom is, or the provision most nearly applicable, or which general principles of law should apply? These questions may be answered in the example laid down below by the Dika Court (the Thai Supreme Court): In Yang Chin Hong Co., Ltd. v Sin Hua Insurance Co. Ltd. " where there are neither written provisions of Maritime law nor such local customs that can be applied, the case of marine insurance shall be decided by analogy to the general principles of law according to

section 4 of the Civil and Commercial Code. In this case, the contract of marine insurance was made in English, therefore the English law, i.e. the Marine Insurance Act 1906 is deemed to apply..." (Dika no.999/2496 (1953)

Consequently, it is seen that due to the absence of Maritime law which is the backbone of maritime commerce the development of the marine insurance business of the country is effected because there are no standard laws or rules governing national market practices. Moreover, foreign laws cannot be suitably applied to all respects of the dispute arising in the national market due to the different conditions and customs in such countries.

The aims of this study are to

i) examine the legal mechanics of the contract of marine cargo insurance, and,

ii) make a study of the appropriate proposals that could be introduced in developing the marine insurance business in the author's country, viz, Thailand.

This paper is divided into 5 chapters. Chapter I deals with the general principles of insurance in the Civil and Commercial Code. Chapter II considers the sources of reference of marine insurance /referred to in the Thai market. Chapter III examines the legal mechanics of the contract of marine cargo insurance. Chapter IV will discuss the future developments of marine insurance business in Thailand. Finally, Chapter V, conclusions, summarizes what could be the fundamental elements of a developing

marine insurance business.

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CHAPTER I

GENERAL PRINCIPLES OF INSURANCE IN THE THAI CIVIL AND COMMERCIAL CODE

Insurance by the Civil and Commercial Code is categorised into insurance against loss, guarantee insurance and insurance on life. Marine insurance, by its nature, mostly falls under the category of insurance against loss. The general principles of insurance under the Civil and Commercial Code will be examined by the following topics.

1. DEFINITION

A contract of insurance is one in which a person agrees to make compensation or to pay a sum of money in case of contingent loss or any other future event specified in the contract, and another person agrees to pay therefore a sum of money, called premium. By this definition it can be seen that fundamentally the nature of insurance is a contract between two parties where one agrees to compensate another party in a case of the specified events in the contract occur causing loss or damage to the property. The characteristics of the contract of insurance are described below:

1.1 Specialized contract

By and large an ordinary contract is a legally binding agreement between two or more persons, which confers rights and duties upon them. The distinction of a contract of insurance is the status of the parties. The parties to a contract can both hold the status of creditor and debtor simultaneously, i.e. the assured is a debtor

in the non-payment premium and at the same time he is a creditor for compensation that will be paid by the insurer where the specified events occur. Furthermore, the insurer holds the status of creditor in the non-payment premium that will be paid by the assured when it dues and the debtor for paying compensation or a sum of money pursuant to the types of insurance. The legal status of the parties is either creditor or debtor corresponding to each other. Therefore, the performance of one party's obligations will not be exercised until the other party has carried out his duties due to the conditions stipulated in the contract, for instance, the insurer will not make any compensation or pay a sum of money to the assured until the non-payment premium was paid to him at some agreed level or in total.

In the contract of insurance, the principal parties are the insurer and the assured. The insurer means the party who agrees to make compensation or to pay a sum of money, the assured means the party who agrees to pay the premium. In some cases it is concerned with the beneficiary in the contract of insurance who is to receive compensation or to be paid a sum of money in the case of insurance on life. There is no question about the assured, it could be an ordinary person or juristic person. But he might have an insurable interest in the subject-matter insured which will be detailed later otherwise there is no contract of insurance. The insurer, particularly in the Thai market, must be a limited company established under the provisions of the Civil and Commercial Code especially for the business of insurance regardless of insurance on life or against loss business, it must be licensed as an insurance company according the Insurance Against Loss Act, B.E.2510 (1967) and or the Insurance on

Life Act B.E. 2510 (1967) as the case may be .

1.2 Aleatory contract

Aleatory contract means an agreement the performance of which by one party depends upon the occurrence of a contingent event. The contract of insurance is an aleatory contract because the insurer will exert his obligation, making compensation or paying a sum of money due to the occurrence of the contingent loss or any other future event specified in the contract that may or may not occur. When there is no loss caused by the specified risks, there will be no compensation or payment. Essentially, the occurrence of any event must be uncertain and if there are any elements of certainty then the contract is not the contract of insurance because there is no risk which is the subject of insurance. The insurance is aimed at giving security to the injured party suffering from the contingent loss or the future event which is contrary to his interests. The risk of the assured is the payment of premium paid against the contingent loss without knowing when it may or may not occur during the certain period of time. If it occurs, compensation will be paid . The performance of the insurer's obligation is also uncertain depending on the occurrence of the contingent event specified in the contract, that compensation is exercised to the assured. However, the insurer is bound by the contract to take such a risk during the period of insurance. It can be said that the purpose of such contracts of insurance is for the insurer to take the risk instead of the assured. Consequently there will be a contract of insurance when the property, rights, interests or legal liability of the assured is at risk by the contingent event in the future that may or may not happen

and if, at the time of making the contract there is no risk or the contingency is over, there is no contract of insurance.

It is observed that before the contract of insurance is formed the assured's risk is on his own shoulders, and, when the contract is concluded, the risk is transferred to the insurer. The effect of the contract of insurance should be taken into consideration if the risk of the insurer does not exist at the time of making the contract, or ceased to exist during the duration, or has not commenced after the contract has been concluded.

i) The case of the insurer's risk not exist at the time of making the contract.

When the contingent event which is the assured's risk has already occurred or never happened at all at the time of making a contract, then it is impossible for the insurer to take the risk of the assured and if the contract is concluded in this way, it is void because there is no subject-matter of insurance, i.e. the risk of both parties. If the assured has paid the premium in advance, what are the legal obligations? It is a question of fact that the assured paid the premium with or without knowing that the contract was void and there is no legal right or obligation upon either party. If he knew and did so, the premium cannot be returned, but, if he did not know and was misled by thinking that it is his obligation to pay the premium according to such a contract, then, it has to be returned.

ii) The risk ceased to exist during the period of the contract.

When the contract of insurance has been concluded already and during the period of insurance the insured risk is ceased to exist, the contract is terminated. But if there are various risks insured against and the parties raise a particular risk for determining the rate of premium, when such risk is ceased to exist during the period of insurance, the contract is still valid. In this case the assured is entitled to have the premium reduced proportionately for the future payment due because of the reducing of the degree of contingent loss. For example, in fire insurance, when the insured house is situated close to a gas terminal where the fire risk is great the premium is fixed higher than other location because of the high risk location. At some stage later the gas terminal is moved then the fire risk is less but may occur in other ways. Thus, the assured is entitled to have the premium reduced proportionately for the future payment.

iii) When the insurer's risk has not commenced after the contract has been concluded.

The commencement of undertaking the assured's risk of the insurer must be fixed at the agreed time when the contract is concluded. Before the insurer commences his risk if the assured terminates the contract, then the insurer is entitled to retain the premium at the amount of one half of the total amount of premium paid by the assured. This amount is calculated on the basis of the duration of the contract entirely if the assured does not terminate the contract. Because to conclude the contract the insurer has prepared some arrangements for performing insurance, moreover, when the contract is terminated without his fault before its agreed ending, then

the insurer shall be recovered for such arrangements.

1.3 Written evidence of the contract required

By the principles of the law of contract, the contract of insurance is a kind of non-formation contract. It is formed when both parties reach the agreement where the offer and the acceptance is unconditionally accepted. But there must be some evidences to confirm that the contract is made and can be enforceable between the parties. What should be considered as a written evidence of the contract? In practice, before the insured enters into the contract he will negotiate with the party who needs insurance, in doing so the negotiation instruments will be made such as slip contained the information required by the assured, etc., and after it is agreed by both parties the insurer will issue a document conforming to the agreement, called the policy of insurance, and deliver to the assured. Accordingly, the written evidence of the contract of insurance can be a policy and or some other documents such as the slip, the interim receipts, interim cover notes issued by the insurer or his agent. It is noted that the written evidence must be signed by the party liable or his agent otherwise it cannot be an evidence against him, for instance, the policy must be signed by the insurer and he is liable for the conditions of insurance stipulated in the policy otherwise the assured cannot claim against the insurer.

2. GENERAL PRINCIPLES OF INSURANCE

The contract of insurance must be composed of the following principles;

2.1 Insurable interest

The Civil and Commercial Code does not give a definition of insurable interest, but saying that the assured in the contract of insurance must have an interest in the event insured against. Otherwise the contract is not binding the parties. Insurable interest can be identified below:

- i) any interest that may be estimated in money because the loss in the contract of insurance includes any injury which may be estimated in money.
- ii) any legal rights in the property insured or legal liabilities.

When the insurable interest should be attached?

The Civil and Commercial Code does not say the time of the attachment of insurable interest. As mentioned above that the assured must have an insurable interest in the event insured and by the principle of insurance the assured cannot insure the thing which he has not interest in that. Therefore, the insurable interest in the subject-matter insured must be attached at the time of making a contract. If the assured has no insurable interest at the time of making the contract, or he has but it has ceased during the period of the contract, consequently, how is the contract affected?

In the case of no insurable interest at the time of making the contract, the contractual parties are not bound, and, therefore, there is no obligation among them. Moreover, in the event of insurable interest ceasing to

exist during the period of the contract, the contract is still valid. Because the assured has an insurable interest at the time of making the contract, but, when the loss occurs he has no right to be compensated due to the cessation of his insurable interest in subject-matter insured. In the latter case the assured has a title to terminate the contract and has no obligation to pay the premium due in the future, for the pre-paid premium is not returnable.

The other aspects of insurable interest that should be taken into consideration is the value of the insurable interest. However, the contract is binding no matter what the value of the insurable interest is fixed. Where it is fixed and the insurer proves that the agreed valuation is substantially too high, then he is entitled to a reduction of the amount of compensation because by the principle of indemnity the compensation will not be exceeded the actual amount of the loss gain by the assured. When the amount of compensation is reduced, the premium is proportionately returned with interest to the assured. Furthermore, if the insurable interest is substantially reduced during the period of insurance, the assured is entitled to a reduction of the sum insured and of the premium. The reduction of the premium shall take effect only for the future.

2.2 Utmost good faith

In making any kind of contract, the parties must act on the basis of good faith because a contract is an agreement which creates a legal relationship binding the parties. The disclosure and/or representation of the parties must be true. The contract of insurance is not out of this rule but requires the utmost good faith of the parties. By its nature, it is an aleatory contract, moreover, whether the insurer will enter into the contract or not also depends upon the nature of the assured's risk and other necessary information which in their turn influence the rate of the premium and conditions of the insurance cover. The assured is in the position of knowing all the material facts of his own risk, thus, the insurer is not able to be in that position to know without representation or disclosure from the assured or his agents. It can be said that the contract of insurance is on the basis of mutual trust between the parties. Nevertheless, both parties have rights to investigate for information might need to exert their obligations according to the agreement.

How to conduct the utmost good faith in the contract of insurance ?

Naturally the utmost good faith is conducted by means of disclosure and representation carried out, mainly, by the assured. Because he is in the good position to do that. This includes the disclosure and representation of the assured's agents too.

1) Disclosure

It is the assured's duty to disclose all necessary facts which would influence the insurer as whether he will insure or not and determine the rate of premium. These materials must exist and be fully aware of its existence,

moreover, it must be factual not opinion.

ii) Representation

All statements or representation made by the assured or his agents must be true. It is not the material facts that the assured has to disclose, but, when the insurer deems necessary to disclose the assured must truly disclose or represent at time of making the contract.

iii) Warranties

Warranty is the assured's guarantee given to the insurer that when the contract is concluded he must perform or refrain from certain acts which can jeopardize the insurer and will fulfil the contract in a good way. The warranty can be expressed clearly in the contract, called express warranty, or a traditional practice in the trade, so called implied warranty.

If at the time of making a contract, the assured knowingly omits or makes false statements of material facts which would have induced the insurer to raise the premium or to refuse to enter into the contract, then the contract is voidable. It is the option of the insurer to terminate or accept as a valid contract.

2.3 Principle of indemnity

The contract of insurance is found on the basis of an agreement of paying a sum of money or compensation in the case of loss or damage occurred to the insured property caused by the specified risks. The purpose of indemnity given by the contract of insurance is to remedy the assured suffering from financial loss, i.e. loss of property

by compensation for such loss in monetary terms.

What is an indemnity provided by the contract of insurance?

By the Civil and Commercial Code the insurer is bound to pay compensation for

1. the actual amount of the loss,
2. the damage caused to the insured property by reasonable measure taken for preventing the loss,
3. all reasonable expenses incurred for preserving the insured property from the loss.

It can be seen that the amount of indemnity depends upon the actual amount of loss. The assured cannot be compensated in excess of the amount of the actual loss gained by him, otherwise a profit could be made of the contract of insurance. The amount of loss is valued at the place where, and at the time when, the loss occurred. However, the sum insured is presumed to be a correct basis for such a valuation.

The insurance against loss, compensation can be either in money or non-monetary term. It is up to the parties' agreement to decide what should be a compensation. The method of indemnity can be classified below:

i) Cash payment

This is based on the valuation of the insurable interest, if there is no valuation then the sum insured is presumed to be a correct basis for indemnity.

ii) Repair

In the case of partial loss, the subject-matter insured is partly damaged and possible to return, more or less,

the same condition before damage. Then, the assured will be compensated by repairing with the insurer's expenses.

iii) Replacement

This indemnity shall be defined in the policy, called the Replacement clause. The assured is compensated for the replacement of the same type, kind, quality as the damaged insured property.

iv) Reinstatement

This indemnity is used for reinstating the subject-matter insured to be good as before, and it cannot be done by repair or replacement. This liability shall be conditioned in the policy especially, for instance, where a factory is insured with the condition that if it is badly damaged so that the assured cannot use anymore the insurer will compensate by rebuilding the new one.

3. POLICY OF INSURANCE

Policy of insurance is a document conforming to the contract of insurance made and signed by the insurer. It is the written evidence of the contract, not the contract itself, but made due to the existing of the contract of insurance. The policy has to be delivered to the assured and contains the details:

- (1) The subject of the insurance.
- (2) The risk taken by the insurer.
- (3) The value of the insurable interest, if that has been fixed.
- (4) The sum insured.
- (5) The amount of the premium and manner of its payment.

(6) If the duration of the insurance has been fixed, its commencement and ending.

(7) The name or trade name of the insurer.

(8) The name or trade name of the assured.

(9) The name of the beneficiary, if any.

(10) The date of the contract of insurance.

(11) The place where, and the date when, the policy was made."

4. MARINE INSURANCE

By and large, marine insurance is, by its nature, an insurance against losses caused by a particular risk, i.e. perils of the seas. Essentially, the nature of the risks covered by this insurance differ from other types of insurance. Thus, the provisions of the Civil and Commercial Code on insurance cannot apply to marine insurance matter. Marine insurance can be categorized into Hull and Machinery insurance, Cargo insurance, Freight insurance and Shipowner's liability to the third party insurance.

The fundamental different characteristics of marine insurance can be identified as follows:

4.1 Economic role

Marine insurance plays an important role in sea trade. Its purpose is to enable the shipowner and the buyer and seller of goods to operate their respective business while relieving themselves, at least partly, of the burdensome financial consequences of their property's being lost or damaged as a result of the various risks of the high sea. Without this cover the various interests invol-

ved in international trade, whether they be owners of goods, shipowners, mortgagees of vessels having provided the necessary finance for the construction of vessel, or banking institutions involved in a documentary sale of goods or extension of credit in connection with the sale of goods, would lack the necessary security of knowing that at least the money equivalent of the objects insured will be available to cover their financial risk in the event of an accident. Thus, marine insurance adds the necessary element of financial security so that the risk of an accident occurring during the transport is not an inhibiting factor in the conduct of international trade.

4.2 International characteristics

A distinctive feature of marine insurance is the degree to which it is international in scope. Most cargo insurance is inherently international since the coverage of goods transported by sea usually involves transport from one country to another. Thus the consignor/seller of the goods and the consignee/buyer often represent separate individuals subject to different laws and speaking different languages. The insurers of the goods may be situated in the country of the consignor or the consignee or in a third country having no other contact with the transport than through the insurance contract. Hull insurance is international as a result of the risk of loss or damage to the vessel occurring abroad and of the tendency for many shipowners to place all or part of their insurance in a country other than the country where they situated. A factor involved in this latter tendency has been the increase in the number of vessels owned by shipowners from countries, including developing countries, which lack sufficient capacity to provide marine insurance cover for

such local vessels, there be requiring many shipowners to obtain their insurance coverage with insurers situated in a few developed market-economy countries such as the United Kingdom of Great Britain and Northern Ireland and the United States of America. Thus, it is not at all uncommon for a shipowner to insure all or part of the value of his vessels directly in another country, even though he may have no connection with this country other than the insurance contract.

4.3 The structure of the marine insurance industry

(a) Mutual insurance association

Broadly speaking, the conduct of marine insurance can be divided into that which is conducted for profit, referred to here as "commercial insurance", and that which is undertaken for mutual benefit, referred to as "mutual insurance".

Mutual insurance involves a group of persons or corporations agreeing in advance to contribute to offset each other's losses. In other words, each member of the group is in a sense an insurer for each other member. When a loss is incurred by one member, all the other members contribute ratably according to a predetermined formula, so that the loss falls evenly on all members. Since contributions are only intended to offset actual losses, there is in mutual insurance, as opposed to commercial insurance, no intention of accumulating a profit (which would only accrue to the member's benefit in any case).

The use of mutual insurance arrangement has been generally limited to the formation of associations of shipow-

ners covering the risk of property loss, referred to simply as hull insurance, and the risk of incurring liabilities in connection with the operation of their vessels, referred to as liability insurance. At the present time, there are a very limited number of mutual associations offering hull insurance cover to ocean-going vessels (often referred to as "hull clubs"). Sometimes such clubs offer liability insurance as well. Most mutual marine insurance associations provide only liability insurance cover. Liabilities for which shipowners need insurance cover can be in the form of, inter alia, cargo claims, claims by the crew for injury and sickness, collision liability claims, and claims for wreck removal. Mutual associations offering insurance for these liabilities are called Protection and Indemnity (P & I) Clubs.

(b) Commercial insurers

Commercial insurers operate on the basis of accepting the "premium" in advance and retaining it whether or not the insured property is lost. The conduct of commercial marine insurance can be found in most countries throughout the world and involves both hull and cargo insurance. Commercial marine insurers vary in size and, with the exception of Lloyd's of London, which is composed solely of private individuals grouped together in various underwriting syndicates, marine insurers are either private or government-owned corporations or governmental entities.

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CHAPTER II

THE APPLICATION OF MARINE INSURANCE LAWS

As stated earlier Thailand has not yet promulgated any codification of a maritime commercial law, like marine insurance or carriage of goods by sea, although it is understood that work has already commenced on this. Moreover, the existing commercial law relating to insurance matter, which is a part of commerce, is solely contained in the Civil and Commercial Code. Furthermore, marine insurance matter is not governed by the provisions of insurance regulated in the said Code. In practice, the governing law of marine insurance is applied by analogy to the general principles of law which may derive from foreign laws, or the international market practices, as a standard rules.

The important factor of determining the applied laws is the legal system. Because the applied law must be in the same system as the national legislation, otherwise it cannot be applied. In Thailand the method of applying the laws to the case arising is mainly relied on the written provisions. The traditional practices or the Court decision cannot be applied, as a law, parallel to the written provision where the latter exists unless where it is stated in the written provision. Particularly, the practice of the Court decision is deemed as an interpretation the spirit of the law. When there is no written provision applicable, the local customs relating to the dispute arising must be applied. If there is no such customs, then, the case arising shall be decided by the

provision most nearly applicable, and in default of such provision, by the general principles of law, by analogy inrespective. Most difficulty is found in determining which laws should be applied.

The references of marine insurance may derive from various sources such as national legislation or foreign laws or the market practices either locally or internationally. They are detailed below:

1. National legislation

By its nature , a contract of marine insurance is a commercial contract that both parties have interests on each other. Thus, the principles of law regarding contract regulated in the Civil and Commercial Code are applicable, for instance, the making or terminating a contract, the fundamental obligations of the parties to a contract and/or the responsibilities, asfar as they are concerned. Apart from this some other principles of insurance such as the insurer's liability regulated in section 879 para 2 of the said Code states: " The insurer is not liable for loss resulting directly from the inherent vice of the subject of insurance unless otherwise provided." , which can be analogized to section 55 (c) of The Marine Insurance Act 1906: " Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils." . The ordina-

ry wear and tear is deemed as an inherent vice by the practice of the Court decision.

2. Foreign laws

The difficulties of referring to foreign laws are of which laws and at what degree of analogy. Generally speaking, the parties to a contract have a liberty of choosing the governing law for the dispute that may arising due to the contract if it does not injure the national legislation. Basically, foreign law will be applied according to the intention of the parties to a contract. In practice, the governing law is stipulated in the policy form to refer to a particular law, most of the cases are referred to the English law and practices (see specimen at the end of the chapter). Moreover, in the event of the choice of law clause does not stipulated in the contract of insurance, when the dispute arising the governing law must be accorded to the real intention of the contractual parties by considering from what language the contract was made in. Because it is assumed that the language of the contract indicate the intention of the contractual parties. Bearing in mind that the applied law must be in the same system of the national legislation, therefore, it must be made in a form of a code, for instance, The Marine Insurance Act 1906.

The foreign law can apply to the case up to the certain respects, in practice, it is subjected to only to all questions of liability for and settlement of any and all claims arising under the policy of insurance. However, the market practice is also taken into consideration for

all conditions stipulated in the policy are mainly derived from the practice of the market and cannot be separated from the governing law when accepted the governing law, the practice of the market must be accepted as well. For example, when the national underwriter reinsures his risk in the international market, the London market, the conditions of risks covered in the original insurance must be accorded to the reinsurance market, i.e. it should cover the same risks, otherwise the reinsurer is not liable for the loss occurred.

3. The market practices

Generally speaking, the insurers prefer to spread their potential liabilities in relatively small amounts over a number of risks in order to profit from the probability that only a limited percentage will experience losses. The concept of the "spreading of risks" is a basic principle of insurance. It is widely practised by marine insurers in order to minimize the extent of financial loss in the event that a particular insured object is lost by an insured peril. Thus, rather than to insure 100 per cent of one object, it is considered better to insure 50 per cent of two objects or, even better, only 25 per cent of four objects, so that the loss of any one object will not be a heavy financial loss to the insurer.

In order to spread risks, a marine insurer may subscribe to only a portion of a risk presented to him (that is to say, he agrees to underwrite the risk of loss of the property only up to a certain percentage of its value), thereby requiring an assured to approach an additional

insurers to agree to accept the remaining portion of the risk. Insurance coverage whereby more than one insurer insures a portion of a risk directly from the assured is called "co-insurance". Although each insurer contracts individually on his own behalf for a portion of the total risk, he nevertheless usually does so on the same contractual terms and conditions as the first insurer (called the "leader").

Alternatively, insurers may accept 100 per cent of a risk and then approach another insurer to accept a portion of the risk which the first insurer does not wish to bear. Such an arrangement, whereby one insurer accepts a risk directly from the assured and then passes on all or a portion of the risk to one or more additional insurers, is called "reinsurance". Subsequent reinsurance contracts made between the first insurer and subsequent insurers do not change the original contractual relationship between the assured and the first insurer.

The practice of marine insurance in the Thai market generally follows the British market. Among the reasons why the use of the policy forms produced by the British insurance market for both hull and cargo insurance has become so widespread that the policy forms are virtually de facto international insurance conditions. It appears to be the historical economic predominance of the British market in terms of insurance placements on both a direct and a reinsurance basis, and above all else, established precedent. Generally speaking, insurance policies written subject to British conditions will be considered easier to reinsure or co-insure and, more importantly, will be more readily accepted by foreign assureds.

However, the practice of referring to the English law is by no means limited to developing countries, it occurs in many developed market-economy countries and some socialist countries. In many cases this reference to English law occurs despite the existence of local marine insurance legislation, but generally such reference is limited to a particular type of marine insurance.

REFERENCE

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), Legal and Documentary Aspects of the Marine Insurance Contract, Report by the Secretariat, TD/B/C.4/ISL/27/Rev.1, New York, 1982, pp. 8, 9, 11, 12, 13.

CHAPTER III

THE LEGAL MECHANICS OF MARINE CARGO INSURANCE

Marine cargo insurance is an insurance against marine losses on goods in transit to overseas destinations. The legal mechanics of a contract of marine cargo insurance are examined under the following topics.

1. CONTRACT OF MARINE CARGO INSURANCE

A contract of marine insurance is defined as a contract whereby the insurer undertakes to indemnify the assured, in a manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure. The contract may be defined as a legally binding agreement between two persons, or more than two persons, which confers rights and duties upon each party in return for the performance of some act by him or for some forbearance to shown by him. The parties to a contract must have the capacity to contract, they must reach "agreement to the same idea", without duress or undue influence, and they must intend to create legal relations.

The parties to a contract of marine insurance are the insurer and the assured. The party who is indemnified, the assured or sometimes also called the insured, and the other party undertaking to indemnify the assured against loss is called the insurer, frequently called the underwriter from the fact that he underwrites the policy or contract of insurance. However, there is another party who is not directly a contractual party, but, neverthe-

less, plays an important role in forming the contract. This is an insurance broker. It is observed that the assured in the contract of marine cargo insurance may be the seller or the buyer depending on the terms of the contract of sale, for instance, c.i.f. term which the seller is obliged to provide a marine insurance on the purchased goods, or f.o.b. term that he is not obliged. Besides the seller and the buyer, the assignee of the insurance policy should be taken into account. Even though at the early stage of making a contract, he is not the party to a contract. But when the rights and/or obligations of the assignor was transferred to him, he then has an insurable interest in the subject-matter insured and becomes the party to a contract.

In placing the risk with the underwriter, the merchant who needs marine insurance cover can directly approach the underwriter themselves. As is well known the business of marine insurance is highly specialised and requires expert knowledge, moreover, as a matter of fact the merchant or cargo owner is not able to know all the matters in the marine insurance market which are not his direct business. Thus, if the cargo owner places his risk by not using an insurance broker, he is then acting without professional advice. The insurance broker who is widely experienced and has the market available in his hands is best engaged, even though it is not compulsory for the cargo owner to engage the broker. The insurance broker is a middleman between merchants and shipowners who on the one hand, wish to insure their properties, and on the other, the private underwriters or public insurance companies. The legal status of the broker, when engaged, is an agent of the assured, not of the underwriter, and is paid for his services by means of a deduction,

called brokerage, from the gross premium payable to the insurer. Eventhough the broker is the assured's agent but he is obliged to act with good faith in operating business with the underwriters. The insurance broker's business is, generally speaking, to provide professional advice and recommendation as to which underwriter to place the risk according to the principal 's instructions, for instance, the nature of the risk and the rate of premium at which he wishes to insure. Besides these functions, when he receives the information, he will communicate to the underwriters and negotiate the placing of the risk, effecting the policy with them on the best possible terms for his employer, paying them the premium, and receiving from them whatever may be due in the event of loss.

2. OBJECTIVES OF THE CONTRACT

The chief objective of the contract of marine cargo insurance is to indemnify the assured suffered from loss of or damage to the insured goods. Sending goods from one country to another, as part of a commercial transaction, can be a risky business. If they are lost or damaged, or if delivery does not take place for some other reasons, the climate of confidence between parties may degenerate to the point where a law suit is brought. The indemnity given by the contract is in a form of compensation against loss or damage caused by the specified risks. It is a sort of financial security that ensure the cargo owner to be able to carry on running his business firmly.

The subject of the contract of insurance is the protection given for the security of the assured in case the agreed contingent events occur, that is, the payment of a

sum of money. This protection is not against accident in that the contract can prevent an accident from happening. Therefore, the subject of the contract of insurance is money paid due to the loss or damage to an insured property caused by the agreed events. But the subject of insurance is distinguished from the subject of the contract of insurance. It is the occurrence of the contingent events which may or may not happen that are insured, not the actual loss or damage caused to the property insured. However, the actual loss or damage caused to the property insured must be the consequence of the occurrence of the contingent events insured. Strictly speaking, it is the risk or adventure of the assured and not the property exposed to peril, which is the subject of insurance. What really insured is the pecuniary interest of the assured in or in respect of the property exposed to peril.

How is the indemnity provided by this insurance?

Indemnity has been defined as " security against loss or damage ", but in connection with contracts of marine insurance has a somewhat specialised meaning. True indemnity would imply the reimbursement of the assured after a loss so that he may be as far as it is possible in the same financial position as that which he would have occupied had no loss occurred. The indemnity offered by a contract of marine insurance is not perfect, being only in a manner and to the extent thereby agreed, but it is clear that the assured must suffer a real pecuniary loss before he can be indemnified. However, the assured is entitled to be compensated precisely to the extent of his pecuniary loss which is a matter of agreement between the parties, i.e. the parties may agree a sum of compensation,

called sum insured, regardless of the loss or damage caused to the property insured even if it exceeds or is less than the real value of the property insured. It can be seen in *Irving v Manning*, 1847:

" A policy of insurance is not a perfect contract of indemnity, it must be taken with some qualification, that the parties may agree beforehand in estimating the value of the subject assured, by way of liquidated damage, as, indeed, they may in any other contract to indemnity."

The basis of indemnity under a marine policy remains constant throughout the risk. The only practice way of conducting marine insurance is on the basis of agreed value. In the case that the sum insured exceeds the actual loss, the assured will be compensated up to the maximum of actual loss. Furthermore, if the sum insured is less than the actual loss, compensation will apply up to the sum insured because the indemnity given is to compensate the assured precisely to the extent of loss he has suffered as a result of the incidence of the risks against which the insurer has agreed to protect him. For example, the underwriters had insured cargoes under valued policies. The cargoes were destroyed by the Confederate cruiser "Alabama", and the insurers paid the cargo owners the insured valued, which was less than the actual value. Subsequently an Act of Congress was passed providing a fund for persons who had suffered damage and had either not been reimbursed at all or inadequately by insurers. No insurer was to receive any of the amounts paid. Nevertheless the insurers claimed to be subrogated. Held: Action dismissed. (*Burnand v Rodocanachi*, 1882, 7 App.Cas.333)

3. PREMIUM

A contract is a business arrangement. Business arrangements must be mutually beneficial, we do not engage in business out of the kindness of our heart. Every act of one party confers some benefit on the other party, and vice versa. In a contract of insurance, the premium is the consideration which the insurer receives from the assured in exchange for their undertaking to pay the sum insured in the event insured against occurs. The rate of premium is normally fixed at the time when the contract is effected. There are no fixed rates in marine insurance and the actual premium for a particular ship or cargo is assessed on the incidence of losses in that trade and the risks that the ship and other conveyance transporting the cargo are likely to undergo. This process of assessing the premium is known as underwriting and the marine insurance contract is embodied in a document called a policy. But sometimes happens that the policy provides for "a premium to be arranged". This means that in some cases the risk to be covered may sometimes not be capable of a reliable estimate in advance so that the insurer cannot quote a premium. It will accordingly be agreed that the amount shall be fixed later at a sum which is found to be reasonable in the circumstances which have actually prevailed. This will bind the parties, unless there is a term to the contrary in the contract, and if they should not be able later to agree on a sum, this will be determined by arbitration or in court. It is a question of fact what a reasonable premium is which accorded to a mercantile understanding and follows the analogy of "reasonable price" in the case of contract of sale.

The rate of premium for cargo insurance is, generally,

determined by numerous factors which are detailed below:

(1) The carrying vessel. The age, classification, flag, ownership, and management of the ship are an important consideration.

(2) Nature of the packing used, this has to be related to the mode of transport and its adequacy as a form of protection to the cargo.

(3) Type of merchandise involved. Some commodities are more vulnerable to damage than other.

(4) Nature of transit and related warehouse accommodation. Generally the shorter the transit time, the less vulnerable the cargo to damage/pilferage.

(5) Previous experience. If the cargo involved has been subject to significant damage or pilferage the premium is likely to be high.

(6) The type of cover needed. The more extensive cover required, the higher the premium rate will be.

(7) The volume of cargo involved. A substantial quantity shipment of export cargo may obtain a more favourable premium, but much depends on the circumstances, particularly transport mode and type of packing, if any.

It may be the case that the assured has made payment for a consideration which wholly failed, i.e. the insurer never incurred any risk. Under the general law of contract, payments of this nature may be recovered. In the case of marine insurance if there is no fraud or illegality on the part of the assured or his agents, the premium is returnable. Sometimes the policy itself provides for a return of the premium under certain conditions.

4. SPECIFIC PRINCIPLES OF MARINE INSURANCE

4.1 Utmost good faith

The object of the contract of marine insurance is to protect the assured suffering from financial loss. The underwriter must rely solely on the good faith of the assured for supplying him with full and true information of many necessary facts on which the character and nature of the risk, and consequently the rate of premium, depend. It is to the assured that all communications, with respect to the actual state of the property proposed for insurance, such as the time and the place at which the goods are to be loaded, or the ship is to sail, etc., are in the first instance addressed: he is thus the natural and sole depositary of much of that information, a full and true communication of which is absolutely essential to the underwriter in order that he may form a right judgement of the nature of the risk and the proper rate of premium. The duty of observing good faith, therefore, must be very much more firmly placed on the assured, although, generally, it is equally binding on the insurer. Due to being a speculative contract, the special facts upon which the contingent chance is to be completed lie most commonly in the knowledge of the assured only, the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back and circumstance in his knowledge to mislead the underwriter into the belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. The keeping back of such circumstance is fraud, and therefore the policy is void. Although the suppression should happen through mistake without any fraudulent intention, yet still the underwriter is deceived, and the

policy is void, because the risk run is really different from the risk understood and intended to be run at the time of the agreement. Good faith forbids either party, by concealing what he privately knows to draw the other into a bargain from his ignorance of that fact and his believing the contrary."

The utmost good faith can be conducted in the following ways:

i) Disclosure

The reason for the rule which obliges parties to disclose is to prevent fraud and to encourage good faith. It is adapted to such facts as vary the nature of the contract which one privately knows and other is ignorant of and has no reason to suspect. The assured is obliged to disclose every material circumstance known by him and deemed to be known in the ordinary course of business. Such circumstances would essentially influence the judgement of a prudent insurer in fixing the premium or determining whether he will take the risk or not. It is clear for the material known by the assured, but the material deemed to be known by him in the ordinary course of business has a wide scope. In one case a material fact might be held immaterial, but a similar fact may be material in another. This can be seen in the following illustrations:

a) Policy on ship. The assured did not disclose:
(i) that the master had reported to him that the vessel had unusual rhythmic vibrations and leaked excessively,
(ii) that after a period in a shipyard she again leaked excessively, and (iii) that a marine surveyor had reported that she was unfit for any use off shore. These

facts were held to be material. The insurer had not waived information of them and could avoid liability on the policy. (Proudfoot v Montifiore, 1867, LR 2 QB 511)

b) Policy on goods. The assured's shipping agents knew that a bill of lading in respect of some steel injection moulds was "claused" in that it stated that the moulds were "unprotected", "secondhand" and "insufficiently packed". This fact was held to be deemed to be known by the assured. (The Bedouin, 1894, P 1, CA)

c) Policy on goods. Non-disclosure of claims experience of previous insurers of containers used in ocean transport. These facts were not material, and even if they were, the present insurers had waived information as to that experience. (Associated Oil Carriers Ltd v Union Insurance Society of Canton Ltd, 1971, 2 KB 184, 22 Com Cas 346)

The following circumstances need not be disclosed, i.e. any circumstances which diminishes the risk, or is known or presumed to be known to the insurer, or information is waived by the insurer, or is superfluous to disclose by reason of any express or implied warranty.

ii) Representation

The assured must represent the true necessary material to the insurer. A representation can either be verbal or in the form of written statements made by the assured or his agents to the underwriter, at or before the time of the making of the contract. It shall present facts which will permit the underwriter to accurately estimate the risk and calculate the premium. This representation is not the material that the assured has to be disclosed, but if the insurer needs to know the assured has to

represent truly. Such statements may be:

1. a positive affirmation by the assured, as of his own knowledge and upon his own responsibility, that the facts represented either do or will exist; or

2. a mere declaration of his belief or expectation that such facts do or will exist; or

3. a mere communication of information which he has received from others respecting them.

The assured or his agent is not bound to give his opinion to the insurer on any matter relating to the adventure. The assured is bound to disclose facts within his knowledge, and not the opinions which he forms on those facts.

The disclosure and representation must be carried out before the contract is concluded. The contract of marine insurance is concluded when the proposal of the assured is accepted by the insurer, whether the policy is issued or not. If the assured non-discloses or misrepresents, whether wilfully or not, any facts which if truly represented or disclosed would be likely to influence the judgement of a prudent insurer and the misrepresentation or non-disclosure of which did in fact influence the insurer in taking the risk or fixing the rate of premium, this will give the insurer the right to avoid the policy. The party to the contract who has the right to avoid the contract can, however, elect either to treat the contract as valid or to repudiate it.

4.2 Insurable interest

This doctrine holds that no one may insure anything unless he has an interest in it, which means that if the

thing insured is preserved he will derive a benefit from its preservation, but if it is in any way damaged or lost the assured will be adversely affected.

Having an insurable interest in the subject-matter insured, the assured must stand in a legal relationship to the marine adventure. It can be explained that in the event of success the assured would benefit, or in the event of misfortune he may suffer a form of loss. If no loss is suffered then he has no insurable interest. Unlike other branches of insurance, the proposer does not need to have an insurable interest at the time the insurance is effected, but he must have such interest at the time the loss occurs. Furthermore, if the assured has no insurable interest the contract becomes a gaming or wagering and is void. For instance, policy on ship, insurer to pay a total loss if she does not arrive at Yokohama on or before 31 December. The insurance is a speculation, the assured having no interest in the ship or adventure. He cannot recover. (*Gedge v Royal Exchange Assurance Corporation*, 1900, 2 QB 214, 217)

Who may have an insurable interest in the subject-matter insured ?

The most obvious case of an insurable interest is the ownership of a ship. However, the following have an insurable interest:

(a) The owners of cargo, to the full value, including a profit element where appropriate.

(b) The lender of money on a bottomry bond (where the ship and cargo are pledged to secure a loan to enable the vessel to continue its voyage) or a respondentia bond

(where the cargo only is pledged to secure a loan).

(c) The master and crew to the extent of their wages.

(d) A person paying advance freight, to the extent that it is not recoverable in the event of a loss.

(e) A reinsurer, to the extent of his risk.

(f) A carrier or other bailees responsible for cargo.

(g) A packer, to the extent that he is liable for damage.

The following illustrations show the attachment of an insurable interest:

The plaintiff bought a yacht in Norway, at seller's risk until her arrival in England. It was held that when the yacht left Norway the buyer had no insurable interest in the yacht, but possibly in her arrival.

(Piper v Royal Exchange Assurance, 1932, 44 LI L Rep 103)

A cargo of rice was insured by the buyer. Under the contract of sale the property was not intended to pass until a full and complete cargo was shipped. The rice was lost when three-fourths only were on board. It was held that the buyer had no interest. (Anderson v Morice, 1876, 1 App Cas 713, HL)

4.3 Subrogation

The doctrine of subrogation is the right of the insurer to "step into the shoes of the assured" upon paying off the loss. This ensures that the assured will not make a profit out of a loss which he has already been indemnified by the insurers. Subrogation is a right but not an obligation. Where the insurer has paid a total loss, or a total loss of part, he is entitled, but not required, to

take over the interest of the assured in the subject-matter. This is an important point for there are times when the insurer may not wish to take over the assured's interest in the subject-matter. One instance where this especially holds true is when a wrecked vessel may be blocking a harbour or a channel, in which case the harbour authorities may remove the wreck at the owner's expense. Moreover, if the wreck is in shallow waters the owner may be liable if another ship, not knowing of the wreck's existence, collides with the submerged wreck. Quite obviously, the insurer does not wish to assume these risks. Furthermore, the insurer is entitled to take over the rights and remedies of the assured against third parties who may be responsible for the loss. Where the insurer has paid for a partial loss, he does not acquire title to the subject-matter insured, but he is subrogated to (i.e. entitled to take over) the rights and remedies for the assured to the extent that the assured has been indemnified for the loss. Moreover, the doctrine of subrogation is applied to all insurers, if there are several, including the assured himself if he is his own insurer for part of the loss.

It follows that the insurer is strictly confined to the rights of the assured, and cannot, by virtue of the doctrine of subrogation, acquire rights which the assured never possessed, e.g. a right to sue himself when two of his own vessels collided with each other. This has led to the inclusion of a "sister-ship clause" in policies, which allows the insurer to claim damage from the (different) insurers of the vessel even if both vessels are owned by the same person.

The insurer, upon indemnifying the loss, may sue, in the

assured's name, any person through whose fault the loss may have occurred. The insurer is entitled to the whole amount of any recovery from a third party up to, but not exceeding, the amount of the claim he has paid. Eventually, the insurer, may, of course, waive his right to subrogation.

5. RISKS INSURED AGAINST MARINE LOSSES

Risks insured in the contract of marine insurance are against marine losses, generally, that is, risks of loss or damaged caused by perils of the seas. The purpose of the policy is to secure an indemnity against accident which may happen, not against events which must happen. The nature of marine loss is a loss incident to marine adventure which is fortuitous accident, and not inevitable incident such as the ordinary wear and tear. However, the indemnity provided by the contract of marine insurance is not a perfect indemnity, therefore, by agreement, the parties can extend the insurance cover against losses on inland waters or any land risks if those may be incidental to any sea voyage by expressing clearly in the policy or by traditional usage of trade. For example, goods can be insured against all risks from the time they leave the shipper's or manufacturer's warehouse until they reach the warehouse of the consignee by any means of transport which may be fixed sea and land risks. Moreover, the marine insurance cover can be extended to cover ship in course of building, or the launching, or any adventure analogous to a marine adventure, for instance, ships when building insured against "fire in ships and on board on stocks, trials, and all marine risks.

The nature of maritime perils is the perils consequent

on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind, or which may be designed by the policy. Accordingly, it can be seen that maritime perils are not only the mentioned risks above but also can be another risks designated by the parties to a contract deemed to be a maritime risk. However, such risks be the kind of the perils consequent on, or incidental to, the navigation of the sea. The following illustrations identify the scope of maritime perils:

Policy on a parcel of gold shipped by a Russian ship to Turkey. The ship is stranded in Turkey, and the gold taken charge of by the Russian Consul. As the ship is Russian, the Russian Consular Court has jurisdiction, and that court awards salvage charges against the gold which would not be payable by English law. The assured has to pay these charges to get his gold. This is a loss by perils of the seas, for which the insurer is liable. (Dent v Smith, 1869, LR 4 QB 414)

Neutral ship carrying contraband of war is damaged by ice. She is captured, and while in charge of a prize crew becomes a total loss. The ship and cargo afterwards condemned by a Japanese prize court. This a loss by capture and not by perils of the seas, and if there is an F C & S clauses, the insurer is not liable. (Anderson v Marten, 1908, AC 334, HL)

Policy on cargo of rice. Rats gnaw a hole in a pipe which passes through the cargo, and sea-water enters through the hole and damages the rice. The sea damage is the proximate cause of the loss, not the rat. (Hamilton v Pandorf, 1887, 12 App Cas 518)

The assured's risk will occur when the insured property, which can be grouped into ship and cargo, freight earning and shipowner's liability to the third incurred by reason of maritime perils, is exposed to maritime perils. The result of maritime perils is to cause "maritime damage", which does not mean only damage which has been caused by the seas, but damage of a character to which a marine adventure is subject. Such an adventure has its own perils, to which either it is exclusively subject or which possess in relation to it a special or peculiar character. Bearing in mind that it is the risk or adventure of the assured and not the property exposed to peril, which is insured.

Another important point is the liability of the insurer in the event of the occurred loss caused by the risks insured against. The insurer will be liable for a compensation of such loss where the risk insured and the occurred loss which is the consequence must be relevant to each other, that is to say, the loss or damage is proximately caused by the risk insured against. The proximate cause can be defined as the most direct cause of loss or damage to the insured property. It is not necessary that the nearest cause in time is the nearest cause in effect. It is essential that the proximate cause of loss be determined to ensure whether the loss is a result of a risk insured against, for if it is not there is no claim under the policy. The following examples below may help to make this more clear.

Policy on goods, which consist of hides and tobacco. Sea-water is shipped during a storm, which wets the hides. The hides become putrid, and the fumes from them spoil the flavour of the tobacco. The damage to the tobacco is proximately caused by the seas. (Montoya v

London Assurance, 1851, 6 Exch 451)

Voyage policy on goods at and from K to Y . While the ship is loading at K, the weight of the cargo brings the discharge pipe below water. In consequence of a valve being negligently left open, water from the discharge pipe gets into the hold and damages the cargo. This is a loss proximately caused by perils of the seas, or other perils of a like kind, for which the insurer is liable. (Davidson v Burnand, 1868, LR 4 CP 117)

Policy on goods shipped in a French ship. The ship is damaged in a collision, and the master, not having the funds requisite for the necessary repairs, gives a bottomry bond on ship, freight and cargo. The ship and freight not being sufficient to satisfy the bond, the assured has to pay the balance to get his goods. The insurer is not liable. The loss is not caused by perils of the seas, but by the lack of funds on the part of the master. (Greer v Poole, 1880, 5 QBD 272)

However, the insurer is not liable for the loss attributable to the wilful misconduct of the assured, any loss proximately caused by delay eventhough it is caused by the perils insured against, and ordinary wear and tear or others provided by the policy.

Risks covered and excluded under the cargo insurance policy

Having said before is the general principle of risks insured against in the contract of marine insurance. In cargo insurance there are some particular points that should be mentioned here.

From the 1st of January 1982, the new policy form and the

new clauses of marine insurance, both hull and cargo insurance, produced by the Institute of London Underwriters were introduced to the London marine insurance market. In the new policy form, no risks are expressed, so one must turn to the attached clauses to discover the risks covered. There are three sets of clauses used with the new policy form, that is, the A, B and C clauses. Each clause covers specified risks and exclusions. In general, it can be grouped into "All risks cover" and "Particular risks cover". In addition there are clauses which are approved by certain trade and underwriters' associations such as the timber load clauses, the frozen meat clauses and many others.

i) All risks cover

This is under the A clause. It covers all risks of loss or damage to the assured goods, except where the loss is excluded by the clause and does not embrace inevitable loss, even if such loss is not mentioned in the specified exclusions.

ii) Particular risks cover

This is under the B and C clauses. These clauses cover the specified risks of loss or damage to the insured goods caused by a reasonably attributable to, or proximately caused by the named risks. No risks, other than those listed are covered. It is noticed that the cause of loss under the B and C clauses is either reasonably attributable to or proximately caused by the insured risks. This is a flexibility in practice because it is very difficult for a surveyor to determine the proximate cause of a loss when goods have been discharged and are

examined in a warehouse or other location removed from the scene of the accident, for certain types of loss. For example, evidence of crushing does not necessarily mean that the goods were damaged during transit, they might just as well have been damaged during handling after discharge, a risk not covered by the B and C clauses. Nevertheless, if the carrying vessel was involved in a collision, with the goods on board, the assured is given the benefit of any doubt as to the cause of loss, the crushing being assumed to be attributable to the collision, unless there is evidence to indicate otherwise. Therefore, the principle of proximate cause is not applied to the loss or damage reasonably attributable caused by the named risks. It must be emphasized that cover is restricted to loss of or damage to the insured goods, and does not extend to consequential losses, for instance, loss of market, commissions, etc. However, the test of proximate cause is applied to any claim made under the A clause, to ensure that the loss is not caused by an inevitable circumstance.

Risks covered under the B and C clauses

1. Fire or explosion

The new clauses do not specify that the explosion must result from fire for cover to apply, and one must assume, in the absence of litigation, that all forms of explosion are embraced within the term. It is necessary to show only that on the balance of probability the loss could be reasonably attributed to a fire or explosion that occurred in the vicinity of the goods during the period of transit covered by the policy.

2. Stranding or grounding

Stranding occurs when the carrying vessel or craft, with the goods on board at the time, runs aground and remains there for an appreciable period of time. Loss or damage caused thereby is likely that packages stowed in the carrying vessel will be crushed by the impact related to the impetus of the movement forward.

3. Overturning and derailment

In practice, it became extended to embrace overland transit within warehouse to warehouse cover. The cover is restricted to goods actually on the conveyance that is overturned or derailed, and assumes that the incident is the result of an accident. The cover would not embrace loss or damage to the insured goods that are not on the conveyance at the time of the accident.

4. Collision or contact of vessel

It is obviously the intention to pay claims for loss or damage to the goods when it is reasonably attributable to the carrying vessel, craft or conveyance striking anything, but it would not include loss or damage resulting from movement of the cargo in the ship's hold during heavy weather, nor loss or damage resulting from jolting inside a road conveyance during transit.

5. Discharge at a port of distress

This risk relates only to discharge of the insured cargo. A port of distress relates to any port, short of the intended port of discharge, at which the carrier dischar-

ges the cargo because the ship has encountered problems which prevent her from continuing transit of the goods. This risk does not include loss or damage resulting from reloading at such port, nor to loss or damage resulting from discharge at the normal port of discharge.

6. General Average sacrifice

A general average sacrifice occurs when the master of the carrying vessel sacrifices the insured goods as part of a general average act. The term does not apply to every form of sacrifice, only to sacrifice in relation to a general average act, so that there can be no cover in this respect if no general average act is admitted. Where the carrier is unable to substantiate a claim for a general average, there can be no claim under the policy for general average sacrifice, even though such was intended at the time of the sacrifice.

7. Jettison

The term "jettison" relates to property that is deliberately thrown overboard from the carrying vessel in time of peril to save the adventure from a total loss.

All risks mentioned above are not the entirely risks covered, only some essential risks that should be taken into strongly consideration under the B and C clauses.

Risks excluded under cargo insurance

The substantially risks excluded under the cargo insurance clauses, A, B and C, can be emphasized as follows:

1. Wilful misconduct of the assured

It is not necessary for a loss to be proximately caused by wilful misconduct of the assured for the exclusion to apply, the exclusion applying when the loss is merely attributable to wilful misconduct of the assured. This means that a loss that is proximately caused by an insured peril would not be recoverable under the policy if the underwriter can show that the loss would not have occurred but for the wilful misconduct of the assured.

2. Ordinary leakage

This is a form of inevitable loss. The term is generally applied to evaporation, which is a natural loss to cargoes with a liquid content.

3. Ordinary breakage

This relates to breakage of certain fragile goods which anticipated by the shipper as a trade loss.

4. Ordinary loss in weight or volume

This is complementary to the "ordinary leakage" exclusion and ensures that all forms of trade loss are excluded from the policy.

5. Ordinary wear and tear

It is difficult to envisage circumstances where "wear and tear" can apply to newly manufactured goods, or to raw materials. The term relates to circumstances where repairs have to be carried out to (say) a machine that is

not new, allowing the underwriter the right to reduce the claim by reason of "betterment" where a new part replaces an old, worn, part that is damaged by an insured risk.

6. Improper packing or stowage

Packing and cargo handling is deemed sufficiently important. Evidence has shown that many claims would have been lessened, if the packaging had been more adequate.

7. Inherent vice

Inherent vice or nature relates to some quality inherent in the goods that will cause loss of or damage to the goods if it manifests itself. For the underwriter to avoid liability, the loss or damage must be caused by inherent vice or nature in the goods themselves.

8. Delay

It is no excuse the delay was caused by an insured peril, thus, if the carrying vessel were to be delayed by a collision, and the delay caused the cargo deteriorate, there could be no claim on the policy for the deterioration on the grounds that it was reasonably attributable to collision. This exclusion does not apply to any contribution the assured has to make toward general average expenses or a salvage award.

9. Insolvency of carrier

This excludes loss, damage or expense arising from insolvency or financial default of the ship operator (including owners, managers and charterers). If this were to be

taken literally, fire damage to goods left in a warehouse at an intermediate port, due to insolvency of a carrier, would not be covered. The reference to "financial default" is probably aimed at circumstances where the carrier uses the goods as security for outstanding financial liabilities, whereby he leaves the goods at an intermediate port in the care of the security holder so that the ship may be released to complete the voyage. If the carrier fails to return to meet his liabilities, the goods may be forfeit with no possibility of a claim under the policy.

6. CARGO INSURANCE UNDER THE CONTRACTS OF SALE

In international trade, there are several types of contracts of sale, but the commonly used terms concerning marine cargo insurance are identified below:

i) F.O.B. contract (Free on Board)

By this contract, goods are placed on board a vessel by the seller at a port of shipment named in the contract of sale. The point of delivery is the ship's rail, and the risk of loss or damage to the goods is transferred from the seller to the buyer at that very point. This means, among other things, that the buyer has to bear any unforeseen costs and risks in bringing the goods to the destination, and that he has to pay at the sales price no matter what happens to the goods, always provided that the cause cannot be attributed to the seller. The seller must supply the goods in conformity with the contract of sale and deliver on board the vessel named by the buyer, at the named port of shipment.

ii) C & F contract (Cost and Freight)

The seller remains responsible for the delivery of the goods to the place agreed in the contract and pays the cost and freight necessary to bring the goods to the named destination. The point of delivery is fixed to the ship's rail, and the risk of loss or damage to the goods is transferred from seller to buyer at that very point.

iii) C.I.F. contract (Cost, Insurance and Freight)

This term is the same as C & F contract but with the addition that the seller has to procure marine insurance against the risk of loss or damage to the goods during carriage. The extent of the cover for risks of loss or damage to the goods varies under different terms of insurance. The point of delivery is fixed to the ship's rail, and the risk of loss or damage to the goods is transferred from the seller to buyer at that very point. Moreover, the seller tenders such insurance documents to the buyer. It is observed that in the c.i.f. contract there are two subordinate contracts made by the seller. Firstly, there is the contract of carriage by sea which is known as the contract of affreightment, under which the shipowner (the carrier) signs a bill of lading on receipt of the goods. Secondly, there is the contract of insurance according to which the underwriters deliver a policy of insurance. However, both of the contracts made by the seller are independent of each other.

iv) Ex Works contract

Under this term the seller's responsibility is only to make the goods available at his premises. In particular

he is not responsible for loading the goods into the vehicle provided by the buyer, unless otherwise agreed. The buyer bears the full cost and risk involved in bringing the goods from there to the desired destination including financing the cargo insurance premium.

It can be seen that the duty of procuring cargo insurance depends on the terms of the contract of sale. Only c.i.f. contract that the procurement of cargo insurance falls upon the seller. Besides this the buyer has to procure an insurance cover by himself.

Insurance cover under c.i.f. contract

The duty of the seller is to procure a cargo insurance cover as is required by the express provisions of the contract of sale, and to tender to the buyer the insurance documents as the contract prescribes. In the absence of any special provisions in the contract of sale, the duty of a seller, with regard to insurance, is to effect at his own cost with reputable insurers a valid policy of marine insurance which shall be available for the benefit of the buyer, covering the transit contemplated by the contract, of the kind and on the terms current in the trade (with reference to the particular goods in question, the types of vessel, the route contemplated, the port of destination and any other considerations that may affect the risk), and in an amount representing the reasonable value of the goods. Failure to provide the required protection, and tender the necessary cover, will place the goods at the risk of the seller, and he will be unable to sue for the price. The insurance cover under the c.i.f. contract is, generally, up to the agreement between the parties. In respect of the absence of such

agreement, the group of risks which are most commonly insured against can be classified as follows:

1. All risks cover

One of the commonest stipulations is for insurance against "all risks". The meaning of this expression is a matter of construction which may vary with the context. In a contract of sale, it may have a wider meaning than it would receive in a policy of insurance. The word "risk" is used to described the quantum of loss in respect of the accident producing the loss, and that the sellers satisfied their obligation by procuring an insurance to cover all risks in the sense of the entire quantum of loss, although it did not protect the buyer against all causes of accident. However, this does not cover inherent vice or mere wear and tear and losses that do not arise from damage to the subject-matter insured, for example, losses caused by delay, loss of profits, etc.

2. Transit cover

The insurance must cover the whole transit contemplated, otherwise the buyer will not receive the protection he has contracted to get. The buyer wants a policy covering the whole adventure.

3. Warehouse to warehouse cover

This covers the goods from the time the goods leave the warehouse at the place named in the policy for commencement of the transit until delivery to final warehouse at the destination named in the policy, provided that in no case shall the period of cover after completion of dis-

charge overside of the ship extend beyond 60 days.

4. Value of goods

The amount for which the goods must be covered is the reasonable value of goods. What is the reasonable value is a question of fact. The value is the value at the place of shipment, and not the value at the destination of goods. Nowadays it also covers a reasonable amount of anticipated profit and the costs of forwarding charges (freight, customs duties, etc.). According to "Incoterms" (International Chamber of Commerce), the seller must include the cost of freight in the insurance and must, moreover, obtain cover to the extent of the c.i.f. value plus 10 per cent.

It is the duty of the seller to tender the policy of insurance on the purchased goods to the buyer. In the event of many shipments has to be carried out under a contract of sale, it will not possible for the seller to tender a separate policy on each shipment. Therefore, the seller will issue a document shows the existence of insurance on the purchased goods to the buyer, called "certificate of insurance" and/or "letters of insurance", and the actual policy will be tendered later.

A certificate of insurance is merely a statement of fact that there is an insurance policy in existence. It is not a complete policy and must be read in conjunction with the policy of insurance to which it refers. This certificate contains all the details of the insurance contract, but, leaving spaces for the insertion of details of a particular shipment.

7. CARGO CLAIMS

The aim of this topic is to look at the overview mechanics of making claims under a contract of marine cargo insurance, not to go into the details of cargo claims procedure especially.

Cargo claims arise, generally speaking, when the subject-matter insured was lost or damaged caused by the risks insured against. Moreover, the loss must be proximately caused by the insured risks or other causes of loss stipulated in the contract, otherwise the insurer is not liable for such losses. The heart of cargo claim is a compensation paid according to the loss by the insurer in order to remedy the assured suffering from loss of property.

7.1 Who can claim for compensation under the cargo policy ?

The parties to a contract of marine cargo insurance are the insurer and the assured which is normally a cargo owner. Therefore, the assured as a contractual party has a title to make claims for compensation of loss under the cargo policy against his underwriter. Another party who is not a direct party to a contract of insurance is an insurance broker. The insurance broker is an assured's agent, so if he is authorized for making claims in the event of loss caused to the insured property, he then is able to do so on behalf of his principal, the assured. The important point of presenting a claim is an insurable interest in the subject-matter insured at the time of loss. Whoever is able to present a claim must have an insurable interest in the subject-matter insured other-

wise the claim is failed. It is notice that in the case of c.i.f. contract, where goods are damaged before shipment, the buyer may sue on the policy, provided it has been assigned to him, although he has no insurable interest in the goods at the time. By assignment of the policy, the assignee became entitled to sue any claim of the assignor, whether or not he had an interest in the subject-matter insured at the time of the loss. The question as to whether the proceeds or any part thereof are to be held for the benefit of the assignor is to be determined as between the assignee and the assignor, and was of no concern to the underwriter.

7.2 Types of loss can be claim

The indemnity given by the contract of marine cargo insurance is a compensation for loss or damage to the insured property caused by the insured risks. By the principle of indemnity the degree of compensation depends on the degree of loss actually sustained by the assured. If the insured goods are totally lost the assured will be compensated up to the sum insured, and, if it does not so, compensation will be portioned according to the actual loss. Moreover, in the event of the assured has taken some measures to minimize or prevent the loss from occurring, the occurring expenses are recovered by the underwriter because this indicates the faithfulness of the assured not to make a profit of an insurance. Accordingly, it can be said that the types of claims are compensation for loss and the reimbursement of the expenses incurred for the purpose of minimising or prevent the loss of the subject-matter insured.

7.3 Cargo claim procedure

Most insurance company policies require that immediate notice be given to the nearest branch or agency in the event of damage giving rise to a claim under a policy on goods. When notified of damage, the company's or Lloyd's agent, as the case may be, proceeds to appoint a suitable surveyor to inspect the goods and to report on the nature and extent of the damage. The presentation of claim is by negotiation on documents supporting the assured's case. It is very difficult to state with any degree of legal precision exactly on whom the onus of proof falls in every case, but generally speaking, the assured must be able to prove a loss by a peril against which he was insured.

7.4 Evidence to establish a claim

The object of making a claim is a compensation, a sum of money, paid to the assured when the insured property is lost or damaged caused by the insured risks. The purpose of compensation is to remedy the assured suffered from financial loss, loss of property, therefore, the amount of compensation depends on the amount of actual loss sustained by the assured. This means that the assured may or may not be compensated up to the sum insured, eventhough it was fixed at the time of making the contract. The burden of proof of loss falls upon the assured.

What should be the evidence ?

The evidence to establish a cargo claim can be summarized as follows:

General documents which are necessary for every types of claims are:

Contract of insurance

The contract is a written evidence conforming the conditions of insurance, risks covered and excluded, rights and duties of the parties, the sum insured, the payment of premium, which are agreed by the parties. The important The important point is to show the existence of the insurance.

Evidence of payment of premium

Premium is a consideration for undertaking the assured's risk by the insurer. Therefore, when the claim is performed the assured has to prove that his contractual obligations is fulfilled pursuant to a contract. The evidence of payment may be a receipt, or other written evidence that shows the payment, however, it is important to be signed by the insurer or his agents.

The insurable interest of the assured

The claimant must have an insurable interest in the subject-matter insured at the time of loss. It may be concerned by the contract of insurance, the invoice, etc.

Shipping documents

- Official certificates relative to origin, condition and suitability of goods for export.
- Detailed specifications giving a full description of the interests shipped, and particulars of the weight and/or measurement thereof.
- Detailed price shipping invoices in respect of the full interest insured.
- Pre-shipment survey report, if any.
- Bill of lading and charter-party, if any, given by shippers to the vessel against the issue of "clean" bill of lading.

Voyage details

- If the carrying vessel has sustained a casualty and/or heavy weather, an extract from the master's log book relative thereto, and/or a copy of the master's extended protest.

Delivery ex ship

- Nature of receipt given to shipowners.
- If a cargo superintendent is employed on behalf of the receivers, a copy of his report.
- Detailed landing account and/or any other documentary evidence relative to the outturn of the goods.

Transit ex ship to final destination

- Identification of the carrier(s) concerned.
- Nature of the receipt given by the carrier on collection of the goods.
- Nature of the receipt given to the carrier upon delivery of the goods.

If the goods have sustained damage

- Report of survey and/or any other documentary evidence relating to the cause, nature and extent of damage.
- If damaged goods have been disposed of by way of sale, the account sale, together with particulars of the sound value obtaining at the date and place of sale.
- If damaged goods have been reconditioned, the accounts for the cost of reconditioning.
- Condemnation certificates relative to damaged goods destroyed on the orders of health authorities or other official bodies.
- Accounts for survey fees any any other charges incurred.

If the goods have been delivered short or are missing

- Final outturn particulars, separating sound and ullaged packages.
- Short landing certificates, if the same have been

issued by the carrying vessel.

- Report of survey, if any, relative to ullaged packages, and any other documentary evidence in respect of the cause and extent of loss.
- Account for survey fee, if any.

In the event of a claim for general average contribution

- If a general average deposit has been paid, the deposit receipt.
- For a contribution as finally established, a copy of the general average statement or extract therefrom in respect of the insured interest.

In the event of a claim for salvage or sue and labour charges

- Full details of the operation concerned and accounts for the charge incurred.

In all cases, where there may be a possibly recovery from the carrier or other parties

- Copies of such notices as may have been made in writing to the carrier or other parties against whom the assured may have a claim, and any correspondence following the delivery of such notice.

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CHAPTER IV

THE FUTURE DEVELOPMENTS OF THE MARINE CARGO INSURANCE BUSINESS IN THAILAND

The entire purpose of insurance is to provide compensation for loss and if that compensation is not forthcoming the insurance is pointless. Moreover, the core of operating an insurance business is to settle a claim arising under the insurance policy speedily, efficiently and effectively so that the assured can be compensated in the right time.

In order to improve the efficiency and effectiveness of the performance of insurance business, the structure and the practices of the market should be taken into consideration.

1. THE STRUCTURE OF THE THAI MARINE INSURANCE MARKET

Broadly speaking, the Thai market is composed of two main sectors, that is, the governmental sector and the private sector. The governmental sector acts as a controlling body which is the Insurance Department in the Ministry of Commerce. The private sector consists of the operating bodies such as the insurance company and, the insurance brokers, etc.

1.1 Insurance companies

An insurance business can be performed only by a limited company which is licensed as an insurance company

according to the Insurance Acts. To become such an insurance company, the following requirements must be fulfilled.

(1) The applicant must be a limited company established under the provisions of the Civil and Commercial Code regardless of whether it is a company registered in Thailand or a branch of a foreign company.

(2) The financial requirements, the applicant must have a financial security guaranteed by the Insurance Registrar. It has to be placed at the time of applying for a license depending on the type of insurance, that is,

(a) Financial security

Financial security is not the registered capital of a company. It may be cash, or the Thai Government Bond, or other financial security determined by the Minister of Commerce. The value of the financial security is as follows:

i) the amount of 1,000,000 Baht (circa US \$ 39,063) for the performance of the Marine and Transportation insurance business

ii) the amount of 1,250,000 Baht (circa US \$ 48,825) for the performance of a particular or various types of insurance business excluding the Marine and Transportation insurance

iii) the amount of 1,500,000 Baht (circa US \$ 58,594) for the performance of a particular or various types of insurance business including the Marine and Transportation insurance.

(b) Maintenance of a capital fund

A "capital fund" means the paid registered capital of a company, the reserved capital in which is included another reserve capital received from the allotment of the net

profit, and the net profit after being provided for such an allotment. The company has to maintain a capital fund up to the following amounts:

- i) not less than 2,500,000 Baht (circa US \$ 97,656) for the performance of the Marine and Transportation insurance business

- ii) not less than 3,000,000 Baht (circa US \$ 117,188) for the performance of a particular or various types of insurance excluding Marine and Transportation insurance business

- iii) not less than 3,500,000 Baht (circa US\$ 136,719) for the performance of a particular or various types of insurance including the Marine and Transportation insurance business.

After these requirements have been fulfilled the license to become an insurance company will be issued.

1.2 Insurance broker

An insurance broker is mostly a juristic person such as a limited company, an ordinary partnership, or a limited partnership. It is observed that the insurance broker's service is not as developed as it should be with regard to the international market. Some of the main factors which inhibit this development can be pointed out:

- i) misunderstandings of the functions and status of the insurance broker and the insurance agent

The insurance agent is an underwriter's employee whose duty includes the inducement of a merchant who needs insurance cover to contract with his employer, the underwriter. But the insurance broker is an independent person, when he is engaged by the merchant he will then

be his agent. His duties are, for instance, to provide the necessary information for the insurance cover which the merchant might need, recommend which underwriter should be dealt with, to be responsible for the payment of premiums paid to the underwriter and the payment of claims delivered to the assured. His remuneration is paid by the underwriter, called brokerage, when the contract of insurance is concluded. Therefore, if there is no contract there will be no remuneration for the broker.

ii) lack of sufficient knowledge of his business
The marine insurance business is highly specialised and requires expert knowledge. When a broker has insufficient knowledge, the business will not be carried out efficiently. It is necessary to have a clear understanding of national legislation, or national market practices. Furthermore, it is necessary to understand international market practices too.

1.3 Shippers

Shippers who send or import goods to or from abroad can be either an ordinary people or juristic persons. Most of the shippers in the national market operate their business individually. There is no professional shippers' organization such as a central organ of shippers dealing with the import and export business.

1.4 Controlling body

The controlling body is The Insurance Department in the Ministry of Commerce. Its principal roles are, for instance, to control the maintenance of the financial position of the insurance company, lay down rules and/or

regulations regarding the performance of the insurance business in the national market, rectify and/or develop the rate structure of premium being updated and to be fair to the relevant parties, maintain the company's documents required by law.

The other governmental agency which does not directly deal with the controlling business but is concerned with maritime promotion is the Office of the Mercantile Marine Promotion Commission in the Ministry of Communications. It was established under the Mercantile Marine Promotion Act, B.E. 2521 (1978). The Office is a working body of the Mercantile Marine Promotion Commission, with the following duties :

- (1) to act as a co-ordination centre of the mercantile ,

- (2) to make a study and assesment of projects, plans or measures relating to the mercantile marine so as to submit the results thereof to the Commission,

- (3) to make a study and analysis, and to co-ordinate thew technical aspects of maritime transport, marine insurance matters, maritime navigation, telecommunications and navigation aids, shipyard and port business and to collect technical data for publications, including the exchange of information with other technical institutions.

2. THE NATIONAL MARKET PRACTICES

2.1 Governing laws

Marine insurance is a commercial contract and the governing law of the contract is the Civil and Commercial Code. But for a special aspect, like marine insurance

matter, which the maritime commercial law is absent. In this respect it refers to the English law and practices under the confinement to questions of liability for and settlement of any and all claims arising under the policy. However, being a commercial contract, thus the provisions of the said Code are applied asfar as they are concerned.

2.2 Settlement of claims

Generally speaking, the method of settling a claim comes under the provisions of the Civil and Commercial Code and the Civil Procedure Code. The claim arising can be settled in two ways, that is, by the compromise either before a court or between the parties before presenting a claim to a court, and by presenting a claim directly to a court of law. When the claim arises the assured has to inform the underwriters as soon as possible by any means of communication, but, in practice it is carried out in a form of notice of claim signed by the assured or the authorized person. The underwriter will adjust the claim through a "claim adjuster" who, in most cases, comes from the claim department of the company. If the claim is settled at this stage the compensation will then be delivered at the agreed amount according to the claim adjustment. If it is not, the case will be brought to the court of law, however, during the court procedure the parties have the right to compromise an agreed compensation. If they do, the court will decide the case pursuant to the parties' compromise. It is noted that the compromise made outside the court of law will be enforceable provided that it was made in the form of written statements. The claimant has, by and large, the onus to prove that the loss is caused by the insured risks stipu-

lated in the policy. After the underwriter has paid for the compensation, he will subrogate the assured's right to recover from the wrong-doing party. The claim evidences should be:

- 1) the original policy or certificate of insurance
- 2) the original invoice or duplications together with shipping specifications and/or weight notes
- 3) the original bill of lading or contract of affreightment
- 4) the survey report of damage or other documentary evidence detailing the loss or damage occurred, or wharf survey notes
- 5) any landing account or weight notes at final destination
- 6) any exchange of correspondence with the carriers and other parties regarding their liability for the loss or damage
- 7) a claim bill presented to the underwriter claiming a compensation for loss.

In the event that various underwriters are concerned, and the claim arising cannot be settled at the negotiation stage, the assured has to sue all the underwriters concerned to claim compensation at a court of law.

3. THE MEASURES OF DEVELOPMENT

It is stated that shipping is an industry characterized by great complexity and by a magnitude of interests and activities. This complex of activities and interests involve ship management, ship navigation, ship designing, ship building, ship repairing, port authorities, ship store business, the cargo owners, the consignor, the

consignee, the financing and banking, ship mortgaging, ship surveying, marine insurance, etc. States, local governments and international maritime organizations also are sharing interest in shipping. For a developing country to succeed in establishing efficient shipping services, she must give importance to all aspects of shipping without neglecting any of them. Marine insurance, by its nature, is a subsidiary business of shipping, but provides great support to a sea transport. It is a financial security protecting the concerned parties involved in shipping activities such as shipowners and, cargo owners. By this commercial instrument, the performance of the shipping business is encouraged into high investment.

The following suggestions focus on the areas of practice in the national market.

3.1 National legislation

One of the fundamental elements of promoting the marine insurance business is the specific law of marine insurance matter. Although the law alone cannot solve all the commercial problems, the law is however the standard rules for operating and controlling the performance of business. Without the specific law some problems may arise, for instance, the difficulty of applying the foreign law or other laws to the dispute arising and the opportunity of using a legal loophole in order to commit a commercial fraud. The specific law can, at least, solve such problems by clearly regulating the contractual relationship, for instance, insurable interests, insurable value, disclosures and representations made at the time of forming the contract, the form and content of the

policy, double insurance, the premium, "floating" or "open" cargo policies, rules on voyage policies (concerning commencement of the voyage, deviation, delay, etc.), liability insurance, insurance for the benefit of another person, the types of risks, the increase of risk during the period of the contract, the effect of negligence of the assured, the assignment of the policy, the loss and abandonment of the insured subject-matter, the obligations of the assured in the event of loss, the measure of indemnity, the rights of the insurer upon payment of a claim and prescription. A further point that should be emphasized in connection with national legislation governing marine insurance is that, as a result of the highly complex and technical nature of the subject-matter it tends to leave a fair amount of discretion to the parties to the contract as to the exact terms and conditions that will govern their insurance relationship. As a result, legislative provisions frequently tend to be optional, that is to say, they are frequently capable of being altered by contract.

3.2 Establishing a central organization of marine underwriters

The main objective of the establishment is to unite the marine underwriters in order that the problems arising can be solved in the proper way, and the measure of development can be accomplished efficiently. This organization should be formed in a commercial organization which has high flexibility in organising its work rather than a non-commercial organ that has more restrictions. It should be composed of all the marine underwriters operating marine insurance business in the national market or other parties who are interested in the marine insu-

rance business. The functions should be as follows:

- (1) act as a consulting body to the members
- (2) provide the necessary advice and recommendations to the members
- (3) assist the members in solving the problems arising by providing an expert or any experts
- (4) take the initiative in establishing a standard plan of marine insurance and/or uniform insurance cover or conditions that are used in the market in order to guide the practice in the national market in the same way
- (5) be a representative of the members in respect of contracting with the government agencies.

During the absence of any maritime commercial law the standard rule or plan of operating marine insurance business should be taken into consideration because, as is well known the enactment of the law consumes a huge amount of time. The central organ should take the initiative to establish this plan by consulting with the members and other experts from the relevant professions, for instance, lawyers and/or maritime lawyers, shippers, insurance brokers, shipowners' associations, port authorities and the government agencies dealing with controlling or promoting this business. The scope of the standard plan should generally cover the scope of insurance, losses and damage, the assured's liability for collision or striking, insurance on ships under construction and third party liability insurance for shipowner (P & I insurance). For cargo insurance, it should cover insurable value, perils insured against, duties of the assured and the person effecting the insurance, insurer's liability, claim settlement, premium and other necessary covers. This standard plan is extremely comprehensive,

covering all the significant aspects of a marine insurance contract which a shipowner or cargo owner might need.

The great advantages of the plan are easy to rectify in order to achieve the real needs of the market due to it being a non-national legislation, and can be simply adapted to the international market practices so that the insurance covers in the national market and in the international market will be the same which is benefit when reinsuring in the international market.

3.3 The claim leader system

This concerns the assured who has insured with various underwriters, and when the claim arises has to make a claim for compensation against all of the underwriters -an inconvenient and expensive business. The claim leader is the underwriter chosen by the assured according to the contract of insurance which states that there will be a leading claim underwriter/leading insurer who has the power to act on behalf of all the other direct underwriters, and co-insurers in any way taken to compensate the assured. In other words, the assured handles the claims against only the leading insurer, instead of all the insurers, both in the case of serious casualties, and in the handling of the usual ordinary claims. The leading underwriter/insurer will contact the co-insurer or other insurers to collect the proportion of interest by the insurance contract, then the compensation will be given to the assured speedily, efficiently and effectively.

The advantage of claim leader system is that the underwriter's claim department can act as adviser, consultant and adjuster at the same time as it has the

authority to take whatever measures it thinks reasonable which is very convenient for the assured when dealing with only one underwriter.

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CHAPTER V

CONCLUSIONS

The distinctive characteristics of a contract of marine insurance are, mainly, the attachment of insurable interest in the subject-matter insured at the time of loss, and the risks insured against marine losses which have the specific nature of risks. Moreover, the infrastructure of business also differs from other types, i.e. there are two types of marine operators; the mutual insurance associations whose members act as both the insurer and the assured at the same time and the commercial insurer.

The development of the marine insurance business in the absence of a national maritime commercial law should be as follows:

(1) The Government should promulgate the law governing marine insurance matters which could be either the regulations attached to the existing law or a new Act.

(2) Establishing a central organization of marine insurers, a step which should be taken initially by the marine operators. The Government should encourage and support the creating of this organization which could assist the Government in providing the real needs of the private companies and control the performance of business.

(3) Create the standard plan for marine insurance and regulate the standard insurance covers or conditions used in the market in order to lead the business in the

right way and create a strong national market.

(4) The claim leader system should be taken into consideration.

(5) Personnel problems. There should be a cooperative training course held by the governmental agency and private companies which should result in good management.

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APPENDIX A

THE CIVIL AND COMMERCIAL CODE

TITLE XX.

INSURANCE

CHAPTER I

GENERAL PROVISIONS

SECTION 861. A contract of insurance is one in which a person agrees to make compensation or to pay a sum of money in case of contingent loss or any other future event specified in the contract, and another person agrees to pay therefore a sum of money, called premium.

SECTION 862. In the present Title:

"Insurer" means the party who agrees to make compensation or to pay a sum of money;

"Assured" means the party who agrees to pay the premium;

"Beneficiary" means the person who is to receive compensation or to be paid a sum of money.

The assured and the beneficiary may be one and the same person.

SECTION 863. A contract of insurance is not binding on the parties unless the assured has an interest in the event insured against.

SECTION 864. When the parties to a contract of insuran-

ce, in fixing the amount of the premium, took into consideration a particular risk, and such risk ceases to exist, the assured is entitled to have the premium reduced proportionately for the future.

SECTION 865. If at the time of making the contract, the assured, or, in case of insurance on life, the person upon whose life or death the payment of the sum payable depends, knowingly omits to disclose facts which would have induced the insurer to raise the premium or to refuse to enter into the contract, or knowingly makes false statements in regard to such facts, the contract is voidable.

If such right of avoidance is not exercised within one month from the time when the insurer has knowledge of the ground of avoidance, or within five years from the date of the contract, such right is extinguished.

SECTION 866. If the insurer knew of the facts mentioned in Section 865, or knew the statements to be false, or would have known of them or of their falsity if he had exercised such care as may be expected from a person of ordinary prudence, the contract shall be valid.

SECTION 867. A contract of insurance is not enforceable by action unless there be some written evidence signed by the party liable or his agent.

A policy of insurance conforming to the contract shall be delivered to the assured.

The policy must be signed by the insurer and contain:

- (1) The subject of the insurance.
- (2) The risk taken by the insurer.
- (3) The value of the insurable interest, if that has

been fixed.

- (4) The sum insured.
- (5) The amount of the premium and manner of its payment.
- (6) If the duration of the insurance has been fixed, its commencement and ending.
- (7) The name or trade name of the insurer.
- (8) The name or trade name of the assured.
- (9) The name of the beneficiary, if any.
- (10) The date of the contract of insurance.
- (11) The place where, and the date when, the policy was made.

SECTION 868. Contracts of Maritime insurance shall be governed by the provisions of the Maritime Law.

CHAPTER II

INSURANCE AGAINST LOSS

PART I

GENERAL PROVISIONS

SECTION 869. "Loss", within the meaning of this Chapter, includes any injury which may be estimated in money.

SECTION 870. If two or more contracts of insurance are made simultaneously for the same loss and the total amount of the sum insured exceeds the actual amount of the loss, the beneficiary is entitled to receive compensation up to such amount only. Each insurer must pay a part of the actual loss in proportion to the sum insured by him.

Contracts of insurance are deemed to have been made simultaneously if their dates are the same.

If two or more contracts of insurance are made

successively, the first insurer is first liable for the loss. If the amount paid by him is not sufficient to cover the loss, the next insurer is liable for the difference and so on, till the loss is covered.

SECTION 871. If two or more contracts of insurance are made simultaneously or successively, a renunciation of the right against one of the insurers does not affect the rights and duties of the others.

SECTION 872. Before the risk begins, the assured may terminate the contract, but the insurer is entitled to one half of the premium.

SECTION 873. If, during the period of insurance, the insurable interest is substantially reduced, the assured is entitled to a reduction of the sum insured and of the premium.

The reduction of the premium shall take effect only for the future.

SECTION 874. If the parties have valued the insurable interest, the insurer is entitled to a reduction of the amount of compensation only if he proves that the agreed valuation is substantially too high and returns a proportionate amount of the premiums with interest.

SECTION 875. If the subject of insurance passes from the assured by will or operation of law, the rights under the contract of insurance are transferred with it.

Unless otherwise provided by the contract, if the assured transfers the subject of insurance and notifies the transfer to the insurer, the rights under the contract of insurance are transferred with it. If, by such

transfer, the risk is substantially altered or increased, the contract of insurance becomes void.

SECTION 876. If the insurer has been adjudged bankrupt, the assured may require proper security to be given him or may terminate the contract.

If the assured is adjudged bankrupt, the same rules shall apply correspondingly; however when the whole amount of the premium has been paid for a certain period of time, the insurer cannot terminate the contract before such period expires.

SECTION 877. The insurer is bound to pay compensation for:

- (1) The actual amount of loss;
- (2) The damage caused to the insured property by reasonable measures taken for preventing the loss;
- (3) All reasonable expenses incurred for preserving the insured property from the loss;

The actual amount of loss shall be valued at the place where, and at the time when, the loss occurred. The sum insured is presumed to be a correct basis for such valuation.

The compensation cannot exceed the sum insured.

SECTION 878. The expenses for valuation of the loss must be borne by the insurer.

SECTION 879. The insurer is not liable if the loss or other event specified in the contract is caused by the bad faith or the gross negligence of the assured or the beneficiary.

The insurer is not liable for loss resulting directly from the inherent vice of the subject of insurance

unless otherwise provided.

SECTION 880. If the loss is caused by the act of a third person, the insurer who pays compensation is subrogated, up to the amount paid by him, to the rights of the assured and of the beneficiary against such third person.

If the insurer has paid part only of the compensation, he cannot exercise his right to the prejudice of the assured or of the beneficiary to claim from the third person for the remainder of the loss.

SECTION 881. When a loss occurs from the happening of the risk assumed by the insurer, the assured or the beneficiary must after he had knowledge of such loss, without delay give notice thereof to the insurer.

If the provision of the foregoing paragraph is not complied with, the insurer can claim compensation for any damage suffered thereby unless the other party can prove that it is impracticable for him to comply with.

SECTION 882. No action for payment of compensation can be entered later than two years after the date of the loss.

No action for payment or refund of a premium can be entered later than two years after the date when the right to payment or refund of premium became due.

APPENDIX B : THE INSTITUTE CARGO CLAUSES 1982

- Institute Cargo Clauses (A)
- Institute Cargo Clauses (B)
- Institute Cargo Clauses (C)
- Institute War Clauses (Cargo)
- Institute Strikes Clauses (Cargo)

1/1/82

INSTITUTE CARGO CLAUSES (A)

RISKS COVERED

- 1 This insurance covers all risks of loss of or damage to the subject-matter insured except as provided in Clauses 4, 5, 6 and 7 below. Risks Clause
- 2 This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance. General Average Clause
- 3 This insurance is extended to indemnify the Assured against such proportion of liability, under the contract of affreightment "Both to Blame Collision" Clause as is in respect of a loss recoverable hereunder. In the event of any claim by shipowners, under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim. "Both to Blame Collision" Clause

EXCLUSIONS

- 4 In no case shall this insurance cover
 - 4.1 loss damage or expense attributable to wilful misconduct of the Assured General Exclusions Clause
 - 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured.
 - 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 4.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants).
 - 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured.
 - 4.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above).
 - 4.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel.
 - 4.7 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- 5 5.1 In no case shall this insurance cover loss damage or expense arising from
 - unseaworthiness of vessel or craft,
 - and unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured,
 where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein. Unseaworthiness and Unfitness Exclusion Clause
- 5.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.
- 6 In no case shall this insurance cover loss damage or expense caused by
 - 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power. War Exclusion Clause
 - 6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereof
 - 6.3 derelict mines torpedoes bombs or other derelict weapons of war.
- 7 In no case shall this insurance cover loss damage or expense
 - 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions. Strikes Exclusion Clause
 - 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
 - 7.3 caused by any terrorist or any person acting from a political motive.

DURATION

- 8 8.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either Transit Clause
 - 8.1.1 on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,
 - 8.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either
 - 8.1.2.1 for storage other than in the ordinary course of transit or
 - 8.1.2.2 for allocation or distribution,
- or
- 8.1.3 on the expiry of 60 days after completion of discharge overseas of the goods hereby insured from the overseas vessel at the final port of discharge, whichever shall first occur.
- 8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.
- 8.3 This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

- 9 If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters*, either
- 9.1 until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,
- or
- 9.2 if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 8 above.
- 10 Where, after attachment of this insurance, the destination is changed by the Assured, *held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.*

Termination
of Contract
of Carriage
Clause

Change of
Voyage
Clause

CLAIMS

- 11 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.
- 11.2 Subject to 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.
- 12 Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the Underwriters will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter to the destination to which it is insured hereunder.
- This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their servants.
- 13 No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival.
- 14 14.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.
- In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.
- 14.2 Where this insurance is on Increased Value the following clause shall apply:
The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.
- In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

Insurable
Interest
Clause

Forwarding
Charges
Clause

Constructive
Total Loss
Clause

Increased
Value
Clause

BENEFIT OF INSURANCE

- 15 This insurance shall not inure to the benefit of the carrier or other bailee.

Not to
Inure Clause

MINIMISING LOSSES

- 16 It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder
- 16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and
- 16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised
- and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Duty of
Assured Clause

- 17 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

Waiver
Clause

AVOIDANCE OF DELAY

- 18 It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

Reasonable
Despatch
Clause

LAW AND PRACTICE

- 19 This insurance is subject to English law and practice.

English Law
and Practice
Clause

NOTE:— It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.

1/1/82

INSTITUTE CARGO CLAUSES (B)

2.8

RISKS COVERED

- 1 This insurance covers, except as provided in Clauses 4, 5, 6 and 7 below,
- 1.1 loss of or damage to the subject-matter insured reasonably attributable to
- 1.1.1 fire or explosion
- 1.1.2 vessel or craft being stranded, grounded, sunk or capsized
- 1.1.3 overturning or derailment of land conveyance
- 1.1.4 collision or contact of vessel, craft or conveyance with any external object other than water
- 1.1.5 discharge of cargo at a port of distress
- 1.1.6 earthquake, volcanic eruption or lightning
- 1.2 loss of or damage to the subject-matter insured caused by
- 1.2.1 general average sacrifice
- 1.2.2 jettison or washing overboard
- 1.2.3 entry of sea, lake or river water into vessel, craft, hold, conveyance, container, liftvan or place of storage,
- 1.3 total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft

Risks Clause

2.3

- 2 This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance.

General Average Clause

2.2

- 3 This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment "Both to Blame Collision" Clause as is in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim.

"Both to Blame Collision" Clause

2.11

EXCLUSIONS

- 4 In no case shall this insurance cover loss damage or expense caused by
- 4.1 loss damage or expense attributable to wilful misconduct of the Assured
- 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
- 4.3 loss damage or expense caused by insufficiency of unsuitability of packing or preparation of the subject-matter insured, (for the purpose of this Clause 4.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)
- 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
- 4.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
- 4.6 loss damage or expense arising from insolvency or financial default of the owners, managers, charterers or operators of the vessel
- 4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons
- 4.8 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

General Exclusions Clause

2.1

- 5 5.1 In no case shall this insurance cover loss damage or expense arising from unseaworthiness of vessel or craft, unfitness of vessel, craft, conveyance, container or liftvan for the safe carriage of the subject-matter insured, where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.
- 5.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.

Unseaworthiness and Unfitness Exclusion Clause

2.5

- 6 In no case shall this insurance cover loss damage or expense caused by
- 6.1 war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- 6.2 capture, seizure, arrest, restraint or detention, and the consequences thereof or any attempt thereat
- 6.3 derelict mines, torpedoes, bombs or other derelict weapons of war.

War Exclusion Clause

2.6

- 7 In no case shall this insurance cover loss damage or expense
- 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
- 7.3 caused by any terrorist or any person acting from a political motive.

Strikes Exclusion Clause

2.7

DURATION

- 8 8.1 This insurance attaches from the time the goods leave the warehouse or place of storage, at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either
- 8.1.1 on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,
- 8.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either
- 8.1.2.1 for storage other than in the ordinary course of transit or
- 8.1.2.2 for allocation or distribution,
- or

Transit Clause

2.8

8.1.3	on the expiry of 60 days after completion of discharge overseas of the goods hereby insured from the overseas vessel at the final port of discharge, whichever shall first occur.	
8.2	If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.	
8.3	This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.	
9	If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters, either	Termination of Contract of Carriage Clause
9.1	until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,	
9.2	or if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 8 above,	
10	Where, after attachment of this insurance, the destination is changed by the Assured, held covered at the premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.	Change of Voyage Clause
CLAIMS		
11	In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.	Insurable Interest Clause
11.1	Subject to 11.2 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.	
11.2		
12	Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the Underwriters will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter to the destination to which it is insured hereunder. This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their servants.	Forwarding Charges Clause
13	No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival.	Constructive Total Loss Clause
14	14.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.	Increased Value Clause
14.2	Where this insurance is on Increased Value the following clause shall apply: The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.	
BENEFIT OF INSURANCE		
15	This insurance shall not inure to the benefit of the carrier or other bailee.	Not to Inure Clause
MINIMISING LOSSES		
16	It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder	Duty of Assured Clause
16.1	to take such measures as may be reasonable for the purpose of averting or minimising such loss, and	
16.2	to ensure that all rights against carriers, bailees or other third parties are properly preserved, and, exercised	
	and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.	
17	Measures taken by the Assured or the Underwriters, with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.	Waiver Clause
AVOIDANCE OF DELAY		
18	It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.	Reasonable Despatch Clause
LAW AND PRACTICE		
19	This insurance is subject to English law and practice.	English Law and Practice Clause

NOTE:— It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.

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INSTITUTE CARGO CLAUSES (C)

RISKS COVERED

- 1** This insurance covers, except as provided in Clauses 4, 5, 6 and 7, below,
- 1.1** loss of or damage to the subject-matter insured reasonably attributable to
- 1.1.1** fire or explosion,
- 1.1.2** vessel or craft being stranded grounded sunk or capsized,
- 1.1.3** overturning or derailment of land conveyance,
- 1.1.4** collision or contact of vessel craft or conveyance with any external object other than water,
- 1.1.5** discharge of cargo at a port of distress,
- 1.2** loss of or damage to the subject-matter insured caused by
- 1.2.1** general average sacrifice
- 1.2.2** jettison.
- 2** This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance.
- 3** This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment "Both to Blame Collision" Clause as is in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim.

EXCLUSIONS

- 4** In no case shall this insurance cover
- 4.1** loss damage or expense attributable to wilful misconduct of the Assured
- 4.2** ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
- 4.3** loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 4.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)
- 4.4** loss damage or expense caused by inherent vice or nature of the subject-matter insured
- 4.5** loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
- 4.6** loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel
- 4.7** deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons
- 4.8** loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- 5**
- 5.1** In no case shall this insurance cover loss damage or expense arising from
- unseaworthiness of vessel or craft,
- unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured,
- where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.
- 5.2** The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.
- 6** In no case shall this insurance cover loss damage or expense caused by
- 6.1** war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- 6.2** capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
- 6.3** derelict mines torpedoes bombs or other derelict weapons of war.
- 7** In no case shall this insurance cover loss damage or expense
- 7.1** caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 7.2** resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
- 7.3** caused by any terrorist or any person acting from a political motive.

DURATION

- 8**
- 8.1** This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either
- 8.1.1** on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,
- 8.1.2** on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either
- 8.1.2.1** for storage other than in the ordinary course of transit or
- 8.1.2.2** for allocation or distribution,
- or
- 8.1.3** on the expiry of 60 days after completion of discharge overside of the goods hereby insured from the overseas vessel at the final port of discharge,
- whichever shall first occur.

8.2	If, after discharge overseas from the overseas vessel, at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.	
8.3	This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.	
9	If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters, either	Termination of Contract of Carriage Clause
9.1	until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,	
9.2	or if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 8 above.	
10	Where, after attachment of this insurance, the destination is changed by the Assured, held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters,	Change of Voyage Clause
CLAIMS		
11	11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.	Insurable Interest Clause
11.2	Subject to 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.	
12	Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the Underwriters will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter to the destination to which it is insured hereunder.	Forwarding Charges Clause
	This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7, above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their servants.	
13	No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned, either on account of its actual total loss, appearing or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival.	Constructive Total Loss Clause
14	14.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.	Increased Value Clause
	In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.	
14.2	Where this insurance is on Increased Value the following clause shall apply: The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.	
BENEFIT OF INSURANCE		
15	This insurance shall not inure to the benefit of the carrier or other bailee.	Not to Inure Clause
MINIMISING LOSSES		
16	It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder	Duty of Assured Clause
16.1	to take such measures as may be reasonable for the purpose of averting or minimising such loss, and	
16.2	to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised	
	and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.	
17	Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.	Waiver Clause
AVOIDANCE OF DELAY		
18	It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.	Reasonable Despatch Clause
LAW AND PRACTICE		
19	This insurance is subject to English law and practice.	English Law and Practice Clause

NOTE:— It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.

1/1/82

INSTITUTE WAR CLAUSES (CARGO)

RISKS COVERED

- 1** This insurance covers, except as provided in Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by
- 1.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
 - 1.2 capture seizure arrest restraint or detention, arising from risks covered under 1.1 above, and the consequences thereof or any attempt thereat
 - 1.3 derelict mines torpedoes bombs or other derelict weapons of war.
- 2** This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these clauses.

Risks
ClauseGeneral
Average
Clause

EXCLUSIONS

- 3** In no case shall this insurance cover
- 3.1 loss damage or expense attributable to wilful misconduct of the Assured
 - 3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
 - 3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 3.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)
 - 3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
 - 3.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
 - 3.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel
 - 3.7 any claim based upon loss of or frustration of the voyage or adventure
 - 3.8 loss damage or expense arising from any hostile use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- 4** 4.1 In no case shall this insurance cover loss damage or expense arising from
- unseaworthiness of vessel or craft,
 - unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured,
- where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.
- 4.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.

General
Exclusions
ClauseUnseaworthiness
and Unfitness
Exclusion
Clause

DURATION

- 5** 5.1 This insurance
- 5.1.1 attaches only as the subject-matter insured and as to any part as that part is loaded on an oversea vessel and
 - 5.1.2 terminates, subject to 5.2 and 5.3 below, either as the subject-matter insured and as to any part as that part is discharged from an oversea vessel at the final port or place of discharge,
- or
- on expiry of 15 days counting from midnight of the day of arrival of the vessel at the final port or place of discharge, whichever shall first occur;
- nevertheless,
- subject to prompt notice to the Underwriters and to an additional premium, such insurance*
- 5.1.3 reattaches when, without having discharged the subject-matter insured at the final port or place of discharge, the vessel sails therefrom, and
 - 5.1.4 terminates, subject to 5.2 and 5.3 below, either as the subject-matter insured and as to any part as that part is thereafter, discharged from the vessel at the final (or substituted) port or place of discharge,
- or
- on expiry of 15 days counting from midnight of the day of re-arrival of the vessel at the final port or place of discharge or arrival of the vessel at a substituted port or place of discharge, whichever shall first occur.
- 5.2** If during the insured voyage the oversea vessel arrives at an intermediate port or place to discharge the subject-matter insured for on-carriage by oversea vessel or by aircraft, or the goods are discharged from the vessel at a port or place of refuge, then, subject to 5.3 below and to an additional premium if required, this insurance continues until the expiry of 15 days counting from midnight of the day of arrival of the vessel at such port or place, but thereafter reattaches as the subject-matter insured and as to any part as that part is loaded on an on-carrying oversea vessel or aircraft. During the period of 15 days the insurance remains in force after discharge only whilst the subject-matter insured and as to any part as that part is at such port or place. If the goods are on-carried within the said period of 15 days or if the insurance reattaches as provided in this Clause 5.2
- 5.2.1 where the on-carriage is by oversea vessel this insurance continues subject to the terms of these clauses,
- or

Transit
Clause

5.2.2 where the on-carriage is by aircraft, the current Institute War Clauses (Air Cargo) (excluding sendings by Post) shall be deemed to form part of this insurance and shall apply to the on-carriage by air.

5.3 If the voyage in the contract of carriage is terminated at a port or place other than the destination agreed therein, such port or place shall be deemed the final port of discharge and such insurance terminates in accordance with 5.1.2. If the subject-matter insured is subsequently reshipped to the original or any other destination, then *provided notice is given to the Underwriters before the commencement of such further transit and subject to an additional premium*, such insurance reattaches

5.3.1 in the case of the subject-matter insured having been discharged, as the subject-matter insured and as to any part as that part is loaded on the on-carrying vessel for the voyage;

5.3.2 in the case of the subject-matter not having been discharged, when the vessel sails from such deemed final port of discharge;

thereafter such insurance terminates in accordance with 5.1.4.

5.4 The insurance against the risks of mines and derelict torpedoes, floating or submerged, is extended whilst the subject-matter insured or any part thereof is on craft whilst in transit to or from the oversea vessel, but in no case beyond the expiry of 60 days after discharge from the oversea vessel unless otherwise specially agreed by the Underwriters.

5.5 Subject to prompt notice to Underwriters, and to an additional premium if required, this insurance shall remain in force within the provisions of these Clauses during any deviation, or any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

(For the purpose of Clause 5

"arrival" shall be deemed to mean that the vessel is anchored, moored or otherwise secured at a berth or place within the Harbour Authority area. If such a berth or place is not available, arrival is deemed to have occurred when the vessel first anchors, moors or otherwise secures either at or off the intended port or place of discharge "oversea vessel" shall be deemed to mean a vessel carrying the subject-matter from one port or place to another where such voyage involves a sea passage by that vessel).

6 Where, after attachment of this insurance, the destination is changed by the Assured, *held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters*.

Change of Voyage Clause

7 Anything contained in this contract which is inconsistent with Clauses 3.7, 3.8 or 5 shall, to the extent of such inconsistency, be null and void.

CLAIMS

8 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.

Insurable Interest Clause

8.2 Subject to 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.

9 9.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

Increased Value Clause

9.2 Where this insurance is on Increased Value the following clause shall apply:

The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.

In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

10 This insurance shall not inure to the benefit of the carrier or other bailee.

Not to Inure Clause

MINIMISING LOSSES

11 It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder

Duty of Assured Clause

11.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

11.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

12 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

Waiver Clause

AVOIDANCE OF DELAY

13 It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

Reasonable Despatch Clause

LAW AND PRACTICE

14 This insurance is subject to English law and practice.

English Law and Practice Clause

NOTE:— It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.

1/1/82

INSTITUTE STRIKES CLAUSES (CARGO)

RISKS COVERED

1 This insurance covers, except as provided in Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by:

Risks
Clause

1.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

1.2 any terrorist or any person acting from a political motive.

2 This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these clauses.

General
Average
Clause

EXCLUSIONS:

3 In no case shall this insurance cover:

General
Exclusions
Clause

3.1 loss damage or expense attributable to wilful misconduct of the Assured

3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured

3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 3.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)

3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured

3.5 loss damage or expense proximately caused by delay; even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

3.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers, or operators of the vessel

3.7 loss damage or expense arising from the absence shortage or withholding of labour of any description whatsoever resulting from any strike, lockout, labour disturbance, riot or civil commotion

3.8 any claim based upon loss of or frustration of the voyage or adventure

3.9 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

3.10 loss damage or expense caused by war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power.

4 4.1 In no case shall this insurance cover loss damage or expense arising from
unseaworthiness of vessel or craft,
unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured,

Unseaworthiness
and Unfitness
Exclusion
Clause

where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.

4.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.

DURATION

5 5.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either

Transit
Clause

5.1.1 on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,

5.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either

5.1.2.1 for storage other than in the ordinary course of transit or

5.1.2.2 for allocation or distribution,

or

5.1.3 on the expiry of 60 days after completion of discharge overside of the goods hereby insured from the overseas vessel at the final port of discharge,

whichever shall first occur.

5.2 If, after discharge overside from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.

5.3 This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 6 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

- 6 If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 5 above, then this insurance shall also terminate *unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters, either*
- 6.1 until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,
- or
- 6.2 if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 5 above.
- 7 Where, after attachment of this insurance, the destination is changed by the Assured, *held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.*
- CLAIMS**
- 8 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.
- 8.2 Subject to 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.
- 9 9.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.
- In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.
- 9.2 Where this insurance is on Increased Value the following clause shall apply:
The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.
- In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.
- BENEFIT OF INSURANCE**
- 10 This insurance shall not inure to the benefit of the carrier or other bailee.
- MINIMISING LOSSES**
- 11 It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder
- 11.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and
- 11.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised
- and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.
- 12 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.
- AVOIDANCE OF DELAY**
- 13 It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.
- LAW AND PRACTICE**
- 14 This insurance is subject to English law and practice.
- Termination of Contract of Carriage Clause.
- Change of Voyage Clause.
- Insurable Interest Clause.
- Increased Value Clause.
- Not to Inure Clause.
- Duty of Assured Clause.
- Waiver Clause.
- Reasonable Despatch Clause.
- English Law and Practice Clause.

NOTE:— It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.